

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 375

WILLIAM H. EDWARDS, COLLECTOR OF INTERNAL
REVENUE, SECOND NEW YORK DISTRICT, PETI-
TIONER

vs.

CHILE COPPER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT

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1 In United States District Court, Southern District of
New York

Writ of error

(Filed May 22, 1924)

UNITED STATES OF AMERICA, ss:

*The President of the United States of America to the Judges of the
District Court of the United States for the Southern District of
New York, Greeting:*

Because, in the record and proceedings, as also in the rendition
of the judgment of a plea which is in the district court, before
you, or some of you, between Chile Copper Company, plaintiff,
and William H. Edwards, Collector of Internal Revenue for the
Second District of New York, defendant, a manifest error hath
happened, to the great damage of the said defendant as is said
and appears by his complaint, we, being willing that such error,
if any hath been, should be duly corrected, and full and speedy
justice done to the parties aforesaid in this behalf, do command
you, if judgment be therein given, that then under your seal,
distinctly and openly, you send the record and proceedings aforesaid,
with all things concerning the same, to the judges of the
United States Circuit Court of Appeals for the Second Circuit, at
the city of New York, together with this writ, so that you have
the same at the said place, before the judges aforesaid, on the 21st
day of June, 1924, that the record and proceedings aforesaid being
inspected, the said judges of the United States Circuit Court
2 of Appeals for the Second Circuit may cause further to be
done therein, to correct that error, what of right and according
to the law and custom of the United States ought to be done.

Witness, the Honorable William H. Taft, Chief Justice of the
United States, this 22nd day of May, in the year of our Lord one
thousand nine hundred and twenty-four and of the Independence
of the United States the one hundred and forty-eighth.

ALEX GILCHRIST,
Clerk of the United States District Court.

The foregoing writ is hereby allowed.

AUGUSTUS N. HAND,
U. S. D. J.

3 [Summons omitted in printing.]

In United States District Court

CHILE COPPER COMPANY, PLAINTIFF

against

WILLIAM H. EDWARDS, COLLECTOR OF INTERNAL
Revenue, Second New York District, defendant

Doc., L. 25/48

Second amended complaint

The plaintiff above named, by Root, Clark, Buckner & Howland, its attorneys, for its complaint, alleges as follows:

For a first cause of action

I. At all times hereinafter mentioned, the plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with a capital stock outstanding of 3,800,000 shares of the par value of \$25 per share, a total of \$95,000,000.

II. On or about the 9th day of April, 1917, the defendant was duly appointed collector of internal revenue for the Second New York District, and at all times since said date was and still is collector of internal revenue for said district and is a resident and inhabitant of the borough of Manhattan, city of New York, in the Southern District of New York.

5 III. This is an action to recover back taxes alleged by the plaintiff to have been erroneously and illegally assessed against the plaintiff and paid by it under protest, and arising under Title IV, Secs. 407-409 of the revenue act of 1916 (39 Stat. 756, 789).

IV. At all the times hereinafter mentioned, Chile Exploration Company was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, with a capital stock outstanding of 10,000 shares of the par value of \$100 per share, a total of \$1,000,000. Its principal business has been the mining of copper from mining property in the Republic of Chile, owned by it; since its incorporation said Chile Exploration Company could not at any time have developed its said mining property without borrowing large sums of money, and in order to borrow sums of money sufficiently large for that purpose, it would have been necessary to sell to investors bonds or other obligations secured by a mortgage upon its property; at all times hereinafter mentioned the laws of the Republic of Chile have provided that mining property in Chile could not be sold for debt, at auction or otherwise, so as to vest title thereto in creditors, and therefore said Chile Exploration Company could not at any time effectively mortgage its mining property in Chile so as to secure an issue of bonds or other obligations, and an issue of bonds or obligations of Chile Exploration Company, unsecured by a mortgage upon its mining property

in Chile, would not have attracted investors and would not have been salable in investment markets.

6 V. The plaintiff was organized for the principal purpose of providing a means whereby money could be borrowed from investors in sums sufficiently large to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned it was impracticable for said Chile Exploration Company to borrow such money directly from investors because of said provisions of the laws of the Republic of Chile making it impossible for said Chile Exploration Company effectively to mortgage its property as security for loans. Satisfactory security for such loans could be provided, however, by a pledge as collateral security of the capital stock of said Chile Exploration Company. The plaintiff was according organized on or about April 16, 1913, for the principal purpose of holding the capital stock of said Chile Exploration Company and pledging such capital stock as security for bond issues, the proceeds of which should be used, loaned and advanced from time to time to furnish the necessary capital to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned, the plaintiff has continued to own all of the issued and outstanding capital stock of said Chile Exploration Company. During the period beginning January 1, 1917, and ending June 30, 1917, the plaintiff borrowed money from investors by the issuance of bonds under a trust agreement, a copy of which is attached hereto and marked "Exhibit A." By section 4 of article two of said trust agreement the plaintiff covenanted that the proceeds of the bonds issued as Series A, which are the only bonds which have been issued thereunder, should be used only (a) to pay off certain indebtedness existing on April 1, 1917, and (b) for the acquisition, construction or improvement (properly chargeable to capital account) after April 1, 1917, of property necessary or useful in connection with the mining, refining or marketing of copper or copper ore derived from property owned by said Chile Exploration Company. In addition to the above a certain other issue of bonds made in the year 1913 was still outstanding in the year 1917.

VI. Chile Exploration Company duly paid the tax assessed against it pursuant to the provisions of section 407 of Title IV of the revenue act of 1916 for the period beginning January 1, 1917, and ending June 30, 1917.

VII. During the period from January 1, 1917, to June 30, 1917, both dates inclusive, the activities of the plaintiff, without any omissions or exceptions, consisted solely of the following:

(1) The stockholders of plaintiff held an annual meeting and a special meeting; the directors of plaintiff held various meetings; directors and officers were duly chosen by appropriate action of the stockholders and directors; stock books for the transfer of plaintiff's capital stock were kept; corporate and accounting records were kept

and such other acts performed and expenses paid as were necessary for the maintenance of the corporate existence and organization of the plaintiff; and the plaintiff maintained an office for the purpose of the activities set forth in this paragraph and paid the ordinary and necessary expenses of maintaining such office.

8 (2) Plaintiff owned and voted by proxy the entire capital stock of said Chile Exploration Company, and thus elected the directors of said Chile Exploration Company, but plaintiff did not act as purchasing or selling agent of said Chile Exploration Company.

(3) Plaintiff had outstanding collateral trust bonds having a par value of \$15,000,000 secured by a pledge of the entire capital stock of said Chile Exploration Company. These had been issued in 1913 and the proceeds therefrom had been paid prior to January 1, 1917, to said Chile Exploration Company as an additional investment in said company. During the six months' period ending June 30, 1917, the plaintiff duly paid the interest upon such bonds. On April 1, 1917, by appropriate action of its stockholders and directors, the plaintiff authorized a further issue of collateral trust bonds, to have a par value of \$100,000,000 and to be secured by a pledge of the entire capital stock of said Chile Exploration Company and executed a trust agreement under which said bonds were secured, a copy of which is attached hereto and marked "Exhibit A." During the six months ending June 30, 1917, the plaintiff executed an agreement with underwriters, issued part of said authorized bonds having a par value of \$35,000,000 as provided for in section 4 of article two of said trust agreement; the plaintiff received payments upon said bonds from subscribers which were deposited in a special account with the Guaranty Trust Company of New York, it paid the expenses of such bond issue out of such special account and made provision for the accrued interest payable upon the bonds.

In said trust agreement the word "company" refers to the plaintiff, and the words "exploration company" refers to said 9 Chile Exploration Company; and said trust agreement specifically provided as follows with reference to the bonds having a par value of \$35,000,000, which were actually issued:

"Article Two. Section 4, \$35,000,000 principal amount of bonds, which shall be of series A, shall be executed by the company and shall be authenticated and delivered by the trustee for one or more of the following purposes:

"(a) The payment of all floating indebtedness of the company and of the exploration company existing on April 1, 1917, excluding indebtedness upon bills of exchange.

"(b) The acquisition, construction, or improvement (properly chargeable to capital account) after April 1, 1917, of property necessary or useful in connection with the mining, refining, or marketing of copper or copper ore derived from deposits in the Province of Antofagasta, Chili, which property upon acquisition

or at the date of construction or improvement will belong to the exploration company or to a subsidiary company.

"The company expressly covenants and agrees that it will apply the said \$35,000,000 principal amount of bonds, or the proceeds thereof, to one or more of the purposes in this section above set forth and to no other purpose, but the trustee shall be under no obligation to see the application of said bonds or their proceeds."

No part of the proceeds of said bond issue was used to pay the floating indebtedness of said Chile Exploration Company or for the acquisition of property by the plaintiff, but the entire proceeds of said bond issue, after the payment of the expenses incident thereto, were used to pay the floating indebtedness of plaintiff existing on April 1, 1917, together with interest thereon, or were advanced from time to time or held for future advance to said Chile Exploration Company for the purposes specified in said subdivision (b) of section 4 of article two of said trust agreement. Plaintiff has at no time made any issue of bonds other than those specified in this paragraph.

(4) The plaintiff owned certain accounts representing amounts previously loaned to said Chile Exploration Company, and during the six months ending June 30, 1917, it received from said Chile Exploration Company payments of interest upon said loans. It also received from said Chile Exploration Company payments on account of a dividend and interest bearing notes in payment of previous loans and of a portion of the bond discount incurred in marketing said 1917 bond issue and is more particularly shown by Exhibit B hereinafter referred to.

(5) During the six months ending June 30, 1917, plaintiff made loans on open account at interest to said Chile Exploration Company for the limited purposes specified below. The first loan in 1917 was made from money borrowed for that purpose. Later loans were made from the proceeds of said 1917 bond issue. All of said advances were used by Chile Exploration Company as required by subdivision (b) of section 4 of article two of said trust agreement to reimburse itself for expenditures made solely for the acquisition, construction, or improvement (properly chargeable to capital account) of property necessary or useful in connection with the mining, refining, or marketing of copper or of copper ore derived from the mineral deposits owned by said Chile Exploration Company. The Guaranty Trust Company of New York, with whom the proceeds of the 1917 bond issue were deposited on special account, was directed on June 4, 1917, that after honoring checks for the payment of specified floating indebtedness of plaintiff and specified expenses of said 1917 bond issue, it should honor checks on this special account only when accompanied by a letter signed by the president or vice president of the plaintiff stating that the proceeds of such check would be used for one or

more of the purposes specified in subdivision (b) of section 4 of article two of said trust agreement dated April 1, 1917, and plaintiff agreed to furnish and did furnish statements showing the application of the proceeds of such checks to the purposes specified. Such advances were made at the request of Chile Exploration Company when it needed funds for the limited purposes specified, and each check to said Chile Exploration Company on said special account was accompanied by a letter to the Guaranty Trust Company of New York stating that the check was drawn pursuant to the letter of June 4, 1917, and that the proceeds thereof would be used for the purposes specified in subdivision (b) of section 4 of article two of said trust agreement. The total sum advanced to said Chile Exploration Company during the six months ending June 30, 1917, was \$1,250,000. The amount charged by that company to construction of plant during this period was \$2,438,995.41. The date, amount, and nature of each receipt by plaintiff from, and of
12 each payment by plaintiff to, said Chile Exploration Company during the six months period ending June 30, 1917, are shown in a schedule attached hereto and marked "Exhibit B" and made a part of this complaint.

(6) The assets and liabilities of plaintiff as shown by its books on December 31, 1916, were as stated by the balance sheet for that date, attached hereto and marked "Exhibit C." This is the balance sheet for the close of the last fiscal year of plaintiff ending prior to January 1, 1917.

VIII. The plaintiff on or about February 28, 1917, executed under oath and filed with the collector of internal revenue for the Second District of New York, a return upon official Form No. 707, setting forth the estimated fair value of the plaintiff's capital stock for the fiscal year ended June 30, 1916, and other information, in the manner prescribed by the regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury for corporations subject to the provisions of said section 407 of Title IV of the revenue act of 1916 and the tax thereby imposed; the plaintiff attached to the return so executed and filed, a statement in writing addressed to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the collector for internal revenue for the Second District of New York, setting forth that said return was executed by the plaintiff and filed by it with the said collector of internal revenue under protest and duress. A copy of said return and protest is attached hereto and marked "Exhibit D."

IX. At the time of filing said return as aforesaid the plaintiff protested as aforesaid to the collector of internal revenue
13 against being required to make said return and against the assessment of any tax based thereon or otherwise, against the plaintiff, under the provisions of said laws and in said written protest (Exhibit D) contended that the plaintiff during the periods aforesaid was engaged solely in representing the interests of a large number of persons in the business of said Chile Exploration Com-

pany (all of whose stock was owned by the plaintiff), that plaintiff existed only for the convenience of such persons in exercising their control as stockholders over said Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company, that the activities of the plaintiff consisted of keeping up its corporate organization, voting the stock of said Chile Exploration Company, receiving dividends upon such stock, and distributing the moneys thus received as dividends among its stockholders, that by reason of said facts plaintiff was not "organized for profit" and was not "carrying on or doing business" within the meaning of section 407 of Title IV of the act of Congress approved September 8, 1916, and that plaintiff was not required by said act of Congress to pay the special excise tax imposed thereby or to render any statement or return or to comply with any regulations of the Secretary of the Treasury or the Commissioner of Internal Revenue prescribed under authority of said act of Congress.

X. The plaintiff executed and filed said return as aforesaid under duress and under coercion of the severe penalties provided by law.

XI. The plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a penalty equal to fifty per centum of the amount of the tax for refusal to file a return and the plaintiff had no means of securing relief from the risk of incurring such penalty except to file its return as aforesaid under a protest against the filing of such return.

XII. Notwithstanding such protest, the Commissioner of Internal Revenue, purporting to act under the provisions of section 407 of Title IV of the revenue act of 1916, assessed a tax of \$21,231.50 against the plaintiff for the period beginning January 1, 1917, and ending June 30, 1917; and the collector of internal revenue of the United States for the Second District of New York, on or about April 7, 1917, notified the plaintiff of said assessment and demanded payment of the said sum of \$21,231.50 within ten days.

XIII. The plaintiff on or about April 17, 1917, paid to the defendant the sum of \$21,231.50; said payment was made to the defendant under protest and under duress and under coercion of the severe penalties provided by law and under the coercion of the said assessment of the Commissioner of Internal Revenue and the said notice and demand for payment of the tax from the collector of internal revenue of the United States for the Second District of New York.

XIV. The plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a fine of five hundred dollars and to a penalty of five per centum of the tax and interest at the rate of one per centum per month until the tax was paid, for failure to pay the tax, and plaintiff had no means of securing relief from the risk of incurring such fine and penalty except to pay under protest the tax purporting to be assessed against it upon the return filed by it as aforesaid.

XV. On or about September 14, 1918, and within two years from the date of the payment of said tax, and prior to the institution of this action, the plaintiff, pursuant to the laws of the United States and the regulations of the Treasury Department in such cases made and provided, duly appealed to the United States Commissioner of Internal Revenue for the refunding of the amount so paid under protest by the plaintiff for said tax as aforesaid, said refund being requested on the alleged ground that the plaintiff was a holding company whose objects and activities were and are exclusively restricted to holding the stock and securities of Chile Exploration Company and that plaintiff was therefore "not carrying on or doing business" during the period from July 1, 1915, to June 30, 1917, both dates inclusive, and was not subject to the capital stock tax imposed by section 407 of Title IV of the revenue act of 1916 or any other law. Said appeal was thereafter on or about July 16, 1919, denied by said commissioner in the form of a decision in writing rendered by him to the plaintiff.

XVI. By reason of the premises the defendant received said sum of \$21,231.50 paid by the plaintiff as aforesaid for the use and benefit of the plaintiff; said sum received by the defendant as aforesaid is still retained by the defendant and said defendant has refused and still refuses to pay the same or any part thereof to the plaintiff, although payment thereof has been duly demanded.

16

For a second cause of action

XVII. The plaintiff repeats and realleges each and every allegation set forth in paragraphs numbered I, II, and IV of the complaint herein, with the same force and effect as if the same were set forth herein in full.

XVIII. This is an action to recover back taxes alleged by the plaintiff to have erroneously and illegally assessed against the plaintiff and paid by it under protest and arising under Title IV, secs. 407-409 of the revenue act of 1916 (39 Stat. 756, 789).

XIX. The plaintiff was organized for the principal purpose of providing a means whereby money could be borrowed from investors in sums sufficiently large to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned it was impracticable for said Chile Exploration Company to borrow such money directly from investors because of said provisions of the law of the Republic of Chile making it impossible for said Chile Exploration Company effectively to mortgage its property as security for loans. Satisfactory security for such loans could be provided, however, by a pledge as collateral security of the capital stock of said Chile Exploration Company. The plaintiff was accordingly organized on or about April 16, 1913, for the principal purpose of holding the capital stock of said Chile Exploration Company and pledging such capital stock as security for bond issues, the proceeds of which should be used, loaned and advanced from time to time to

17 furnish the necessary capital to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned the plaintiff has continued to own all of the issued and outstanding capital stock of said Chile Exploration Company. During the year beginning July 1, 1917, and ending June 30, 1918, the plaintiff borrowed money from investors by the receipt of payments on subscriptions to bonds issued on April 1, 1917, under a trust agreement, a copy of which is attached hereto and marked "Exhibit A." By section 4 of article two of said trust agreement, the plaintiff covenanted that the proceeds of such bonds should be used only (a) to pay off certain indebtedness existing on April 1, 1917, and (b) for the acquisition, construction, or improvement (properly chargeable to capital account) after April 1, 1917, of property necessary or useful in connection with the mining, refining, or marketing of copper or copper ore derived from property owned by said Chile Exploration Company. In addition to the above a certain other issue of bonds made in the year 1913 was still outstanding in the years 1917 and 1918.

XX. Chile Exploration Company duly paid the taxes assessed against it pursuant to the provisions of section 407 of Title IV of the revenue act of 1916 for the period beginning July 1, 1917, and ending June 30, 1918.

XXI. During the preceding taxable period, to wit: January 1, 1917, to June 30, 1917, the plaintiff's activities were as stated in paragraph VII of this complaint, each and every allegation of which the plaintiff repeats and realleges with the same force and effect as if the same were set forth herein in full.

18 During the period from July 1, 1917, to June 30, 1918, both dates inclusive, the activities of the plaintiff, without any omissions or exceptions, consisted solely of the following:

(1) The stockholders of the plaintiff held an annual meeting; the directors of plaintiff held various meetings; directors and officers were duly chosen by appropriate action of the stockholders and directors; stock books for the transfer of plaintiff's capital stock were kept; corporate and accounting records were kept and such other acts performed and expenses paid as were necessary for the maintenance of the corporate existence and organization of the plaintiff; and the plaintiff maintained an office for the purposes of the activities set forth in this paragraph and paid the ordinary and necessary expenses of maintaining such office.

(2) Plaintiff owned and voted by proxy the entire capital stock of the said Chile Exploration Company and thus elected the directors of said Chile Exploration Company, but plaintiff did not act as purchasing or selling agent of said Chile Exploration Company.

(3) Plaintiff had outstanding collateral trust bonds having a par value of \$15,000,000 secured by a pledge of the entire capital stock of said Chile Exploration Company. These bonds had been issued in 1913 and the proceeds therefrom had been paid prior to January

1, 1917, to said Chile Exploration Company as an additional investment in said company. During the year ending June 30, 1918, the plaintiff duly paid the interest upon said bonds. The plaintiff also had outstanding collateral trust bonds having a par value of 19 \$35,000,000 which had been issued on April 1, 1917, which had been paid for in part only by subscribers, and during the year ending June 30, 1918, the plaintiff received further payments thereon from subscribers, and duly paid the interest upon such bonds. The limited purposes for which the proceeds of said 1917 bond issue could be used under said trust agreement (Exhibit A) and the limited purposes for which such proceeds were used are set forth in said Paragraph VII of this complaint.

(4) The plaintiff owned certain accounts and notes representing amounts previously loaned by it to said Chile Exploration Company, and during the year ending June 30, 1918, it received from said Chile Exploration Company payments of interest on such notes and loans and payments on account of a dividend, as is more particularly shown by Exhibit B.

(5) During the year ending June 30, 1918, plaintiff made loans on open account at interest to said Chile Exploration Company for the limited purposes specified below. Such loans were made from the proceeds of said 1917 bond issue. All of such advances were used by Chile Exploration Company as required by subdivision (b) of section 4 of article two of said trust agreement to reimburse itself for expenditures made solely for the acquisition, construction or improvement (properly chargeable to capital account) of property necessary or useful in connection with the mining, refining or marketing of copper, or of copper ore derived from the mineral deposits owned by said Chile Exploration Company. The Guaranty Trust Com-
20 pany of New York, with whom the proceeds of the 1917 bond issue were deposited on special account, was directed on June 4, 1917, that after honoring checks for the payment of specified floating indebtedness of plaintiff and specified expenses of said 1917 bond issue, it should honor checks on this special account only when accompanied by a letter signed by the president or vice president of the plaintiff stating that the proceeds of such check would be used for one or more of the purposes specified in subdivision (b) of section 4 of article two of said trust agreement dated April 1, 1917, and plaintiff agreed to furnish and did furnish statements showing the application of the proceeds of such checks to the purposes specified. Such advances were made at the request of Chile Exploration Company, when it needed funds for the limited purposes specified, and each check to said Chile Exploration Company on said special account was accompanied by a letter to the Guaranty Trust Company of New York stating that the check was drawn pursuant to the letter of June 4, 1917, and that the proceeds thereof would be used for the purposes specified in subdivision (b) of Section 4 of article two of said trust agreement. The total sum advanced to said Chile Ex-

ploration Company during the year ending June 30, 1918, was \$3,500-000. The amount charged by that company to construction of plant during this period was \$4,063,735.62. The date, amount and nature of each receipt by the plaintiff from, and of each payment by plaintiff to, said Chile Exploration Company during the year ending June 30, 1918, are shown in a schedule attached hereto and marked "Exhibit B" and made a part of this complaint.

• (6) During the year ending June 30, 1918, the plaintiff bor-
21 rowed from Guggenheim Brothers, a partnership and repaid to them with interest a single loan of \$500,000.

(7) The assets and liabilities of the plaintiff as shown by its books on December 31, 1916, were as stated on the balance sheet for that date attached hereto and marked "Exhibit C." This is the balance sheet for the close of the last fiscal year of plaintiff ending prior to July 1, 1917.

XXII. Plaintiff, on or about August 31, 1917, executed under oath and filed with the collector of internal revenue for the Second District of New York a return upon official Form No. 707, setting forth the estimated fair value of the plaintiff's capital stock for the fiscal year ended June 30, 1917, and other information in the manner prescribed by the regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury for corporations subject to the provisions of section 407 of Title IV of the revenue act of 1916 and the tax thereby imposed; plaintiff attached to the return so executed and filed a statement in writing addressed to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the collector of internal revenue for the Second District of New York, setting forth that said return was executed by the plaintiff and filed by it with the said collector of internal revenue under protest and duress. A copy of said return and protest is attached hereto and marked "Exhibit E."

XXIII. At the time of filing said return as aforesaid the plaintiff protested as aforesaid to the collector of internal revenue against
being required to make said return and against the assessment
22 of any tax based thereon or otherwise, against the plaintiff,
under the provisions of said laws and in said written protest
(Exhibit E) contended that the plaintiff during the periods aforesaid was engaged solely in representing the interests of a large number of persons in the business of said Chile Exploration Company (all of whose stock was owned by the plaintiff), that plaintiff existed only for the convenience of such persons in exercising their control as stockholders over said Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company, that the activities of the plaintiff consisted of keeping up its corporate organization, voting the stock of said Chile Exploration Company, receiving dividends upon such stock and distributing the moneys thus received as dividends among its stockholders, that by reason of said facts plaintiff was not "organized for profit" and was not "carrying on or doing business" within

the meaning of section 407 of Title IV of the act of Congress approved September 8, 1916, and that plaintiff was not required by said act of Congress to pay the special excise tax imposed thereby or to render any statement or return or to comply with any regulations of the Secretary of the Treasury or the Commissioner of Internal Revenue prescribed under authority of said act of Congress.

XXIV. The plaintiff executed and filed said return as aforesaid under duress and under coercion of the severe penalties provided by law.

XXV. The plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a penalty equal to fifty per centum of the amount of the tax for refusal to file a return and the plaintiff had no means of securing relief from the risk of incurring such penalty except to file its return as aforesaid under a protest against the filing of such return.

XXVI. Notwithstanding such protest, the Commissioner of Internal Revenue, purporting to act under the provisions of section 407 of Title IV of the revenue act of 1916, assessed a tax of \$44,676.50 against the plaintiff for the period beginning July 1, 1917, and ending June 30, 1918, and the collector of internal revenue of the United States for the Second District of New York, on or about October 24, 1917, notified plaintiff of said assessment and demanded payment of the said sum of \$44,676.50 within ten days.

XXVII. The plaintiff on or about October 31, 1917 paid to the defendant the sum of \$44,676.50; said payment was made by the plaintiff under protest and under duress and under coercion of the severe penalties provided by law and under the coercion of the assessment of the Commissioner of Internal Revenue and the said notice and demand for payment of the tax from the collector of internal revenue of the United States for the Second District of New York.

XXVIII. The plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a fine of five hundred dollars and to a penalty of five per centum of the tax and interest at the rate of one per centum per month until the tax was paid, for failure to pay the tax, and plaintiff had no means for securing relief from the risk of incurring such fine and penalty except to pay under protest the tax purporting to be assessed against it upon the return filed by it as aforesaid.

XXIX. On or about September 14, 1918, and within two years from the date of the payment of said tax, and prior to the institution of this action, the plaintiff, pursuant to the laws of the United States and the regulations of the Treasury Department in such cases made and provided, duly appealed to the United States Commissioner of Internal Revenue for the refunding of the amount so paid under protest by the plaintiff for said tax as aforesaid, said refund being requested on the alleged ground that the plaintiff was a holding company whose objects and activities were

and are exclusively restricted to holding the stock and securities of Chile Exploration Company and that plaintiff was therefore "not carrying on or doing business" during the period from January 1, 1916 to June 30, 1918, both dates inclusive, and was not subject to the capital stock tax imposed by section 407 of Title IV of the revenue act of 1916 or any other law. Said appeal was thereafter, on or about July 16, 1919, denied by said commissioner in the form of a decision in writing rendered by him to the plaintiff.

XXX. By reason of the premises the defendant received the sum of \$44,676.50 paid by the plaintiff as aforesaid for the use and benefit of the plaintiff, and said sum received by the defendant as aforesaid is still retained by the defendant and said defendant has refused and still refuses to pay the same or any part thereof to the plaintiff, although payment thereof has been duly demanded.

For a third cause of action

25 XXXI. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs I, II and IV of the complaint herein, with the same force and effect as if the same were set forth herein in full.

XXXII. This is an action to recover back taxes alleged by the plaintiff to have been erroneously and illegally assessed against the plaintiff and paid by it under protest and arising under Title X, sec. 1000 of the revenue act of 1918 (40 Stat. 1051, 1126).

XXXIII. The plaintiff was organized for the principal purpose of providing a means whereby money could be borrowed from investors in sums sufficiently large to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned it was impracticable for said Chile Exploration Company to borrow such money directly from investors because of said provisions of the laws of the Republic of Chile making it impossible for said Chile Exploration Company effectively to mortgage its property as security for loans. Satisfactory security for such loans could be provided, however, by a pledge as collateral security of the capital stock of said Chile Exploration Company. The plaintiff was accordingly organized on or about April 16, 1913, for the principal purpose of holding the capital stock of said Chile Exploration Company and pledging such capital stock as security for bond issues, the proceeds of which should be used, loaned, and advanced from time to time to furnish the necessary capital to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned the plaintiff has continued to own all of the issued and outstanding capital stock of the said Chile Exploration Company.

26 During the period beginning July 1, 1918, and ending June 30, 1919, the plaintiff borrowed money from investors by the receipt of subscriptions on bonds theretofore issued on April 1, 1917, under a trust agreement, a copy of which is attached hereto and marked "Exhibit A." By section 4 of article two of said trust agreement, the plaintiff covenanted that the proceeds of said bonds

should be used only (a) to pay off certain indebtedness existing on April 1, 1917, and (b) for the acquisition, construction, or improvement (properly chargeable to capital account) after April 1, 1917, of property necessary or useful in connection with the mining, refining, or marketing of copper or copper ore derived from the property owned by said Chile Exploration Company. In addition to the above, a certain other issue of bonds made in the year 1913 was still outstanding in the years 1918 and 1919.

XXXIV. Chile Exploration Company duly paid the tax assessed against it pursuant to the provisions of section 1000 of Title X of the revenue act of 1918 for the period beginning July 1, 1918, and ending June 30, 1919.

XXXV. During the preceding taxable year, to wit, July 1, 1917, to June 30, 1918, the plaintiff's activities were as stated in Paragraph XXI of this complaint, each and every allegation of which the plaintiff repeats and realleges with the same force and effect as if the same were set forth herein in full.

During the period from July 1, 1918, to June 30, 1919, both dates inclusive, the activities of the plaintiff, without any omissions or exceptions, consisted solely of the following:

27 (1) The stockholders of plaintiff held an annual meeting; the directors of plaintiff held various meetings; directors and officers were duly chosen by appropriate action of the stockholders and directors; stock books for the transfer of plaintiff's capital stock were kept; corporate and accounting records were kept and such other acts performed and expenses paid as were necessary for the maintenance of the corporate existence and organization of the plaintiff; and the plaintiff maintained an office for the purpose of the activities set forth in this paragraph and paid the ordinary and necessary expenses of maintaining such office.

(2) Plaintiff owned and voted by proxy the entire capital stock of said Chile Exploration Company and thus elected the directors of said Chile Exploration Company, but plaintiff did not act as purchasing or selling agent of said Chile Exploration Company.

(3) Plaintiff had outstanding collateral trust bonds having a par value of \$15,000,000 secured by a pledge of the entire capital stock of said Chile Exploration Company. These bonds had been issued in 1913 and the proceeds therefrom had been paid prior to January 1, 1917, to said Chile Exploration Company as an additional investment in said company. During the year ending June 30, 1919, the plaintiff duly paid the interest upon such bonds. The plaintiff also had outstanding collateral trust bonds having a par value of \$35,000,000 which had been issued on April 1, 1917, which had been paid for in part only by subscribers, and the plaintiff received further payments thereon from subscribers and duly paid the interest upon such bonds. The limited purposes for which the

28 proceeds of said 1917 bond issue could be used under said trust agreement, and the limited purposes for which such proceeds were used, are set forth in Paragraph VII of this com-

plaint, each and every allegation of which the plaintiff repeats and realleges with the same force and effect as if the same were set forth herein in full.

(4) The plaintiff owned certain accounts and notes representing amounts previously loaned to said Chile Exploration Company and during the year ending June 30, 1919, it received from said Chile Exploration Company a single payment of interest upon such loans and notes and payments on account of a dividend as is more particularly shown by Exhibit F hereinafter referred to.

(5) During the year ending June 30, 1919, plaintiff made loans on open account at interest to said Chile Exploration Company for the limited purposes specified below. Such loans were made from the proceeds of said 1917 bond issue. All of said advances were used by Chile Exploration Company, as required by subdivision (b) of section 4 of article two of said trust agreement, to reimburse itself for expenditures made solely for the acquisition, construction or improvement (properly chargeable to capital account) of property necessary or useful in connection with the mining, refining, or marketing of copper or of copper ore derived from the mineral deposits owned by said Chile Exploration Company. The Guaranty Trust Company of New York, with whom the proceeds of the 1917 bond issue were deposited on special account, was directed on June 4, 1917, that after honoring checks for the payment of specified floating indebtedness of plaintiff and specified expenses of said 1917 bond issue, it should honor checks on this special account only when accompanied by a letter signed by the president or vice president of the plaintiff stating that the proceeds of such check would be used for one or more of the purposes specified in subdivision (b) of section 4 of article two of said trust agreement dated April 1, 1917, and plaintiff agreed to furnish, and did furnish, statements showing the application of the proceeds of such checks to the purposes specified. Such advances were made at the request of Chile Exploration Company when it needed funds for the limited purposes specified and each check to said Chile Exploration Company on said special account was accompanied by a letter to the Guaranty Trust Company of New York stating that the check was drawn pursuant to the letter of June 4, 1917, and that the proceeds thereof would be used for the purposes specified in subdivision (b) of section 4 of article two of said trust agreement. The total sum advanced to said Chile Exploration Company during the year ending June 30, 1919, was \$7,136,000. The amount charged by that company to construction of plant during this period was \$7,920,959.12. The date, amount, and nature of each receipt by plaintiff from, and of each payment by plaintiff to said Chile Exploration Company during the year ending June 30, 1919, are shown in a schedule attached hereto and marked "Exhibit F" and made a part of this complaint.

(6) The plaintiff had certain surplus funds received from said 1917 bond issue which were in excess of the amounts which it was deemed proper and expedient to advance during said period to said Chile Exploration Company for the limited purposes specified in said subdivision (b), section 4, article two of said trust agreement, by which said 1917 bond issue was secured. A portion of 30 such funds was invested by plaintiff in Liberty bonds and United States certificates of indebtedness. The major portion of such funds was on deposit with the Guaranty Trust Company of New York, a corporation. The plaintiff authorized said Guaranty Trust Company of New York to make loans out of such funds for the account and risk of the plaintiff. Such loans were demand loans, commonly known as "call loans," which were secured by collateral and which yielded a higher rate of interest than that paid upon bank deposits. The Guaranty Trust Company of New York attended to all details in connection with the making and calling of such loans and the deposit of collateral security. Plaintiff was currently advised of the names of all borrowers, the amount loaned to each and the collateral security deposited by each with said Guaranty Trust Company of New York. If the collateral security or the borrower was not satisfactory, plaintiff notified said Guaranty Trust Company of New York to call the loan.

The maximum amount of said call loans during the year ending June 30, 1919, was \$5,000,000. Attached hereto and marked "Exhibit G" is a statement showing the monthly debit balances in the call loan account on plaintiff's books during the year ending June 30, 1919. On information and belief, the records of said Guaranty Trust Company of New York show that during the year ending June 30, 1919, one hundred forty-one loans, aggregating \$26,045,000, were made and one hundred thirty-five loans aggregating \$25,045,000 were called or paid. Attached hereto and marked "Exhibit H" is a statement for the year ending June 30, 1919, showing by 31 months the number of loans made and the aggregate amount thereof and the number of loans called and the aggregate amount thereof. Plaintiff is informed and believes that "Exhibit H" is in accordance with the records of said Guaranty Trust Company of New York. During the year ending June 30, 1919, the plaintiff received \$194,579.20 interest on said call loans. Attached hereto and marked "Exhibit I" is a schedule showing by month the amount of interest so received.

(7) The assets and liabilities of the plaintiff as shown by its book on December 31, 1917, were as stated on Exhibit A of the return for the taxable period ending June 30, 1919, a copy of which is attached hereto and marked "Exhibit J." This is the balance sheet for the close of the last fiscal year of plaintiff ending prior to July 1, 1918.

XXXVI. The plaintiff on or about September 30, 1918, executed under oath and filed under protest and duress with the collector of

internal revenue for the Second District of New York, a return for special excise tax, attaching to said return the following statement:

"The Chile Copper Company is a holding company, whose objects and activities are exclusively restricted to holding the stocks and securities of Chile Exploration Company, a corporation organized under the laws of the State of New Jersey.

"Under Articles 5 and 6 of regulations number 38 (revised), relating to the capital stock tax, this company is not 'carrying on or doing business' and never has carried on or done business within the meaning of the law."

XXXVII. Thereafter in response to a written demand from 32 the Commissioner of Internal Revenue, the plaintiff on or about August 25, 1919, executed under oath and filed with the collector of internal revenue for the Second District of New York, a return upon official Form No. 707, setting forth the estimated fair value of the plaintiff's capital stock for the fiscal year ended December 31, 1917, and other information in the manner prescribed by the regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury for corporations subject to the provisions of section 1000 of Title X of the revenue act of 1918, and the tax thereby imposed; plaintiff attached to the return so executed and filed, a statement in writing addressed to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the collector of internal revenue for the Second District of New York, setting forth that said return was executed by the plaintiff and filed by it with the said collector of internal revenue under protest and duress. A copy of said return and protest is attached hereto and marked "Exhibit J."

XXXVIII. At the time of filing said return as aforesaid the plaintiff protested as aforesaid to the collector of internal revenue against being required to make said return and against the assessment of any tax based thereon or otherwise, against the plaintiff, under the provisions of said laws, and in said written protest (Exhibit J) contended that the plaintiff during the periods aforesaid was engaged solely in representing the interests of a large number of persons in the business of said Chile Exploration Company (all of whose stock was owned by the plaintiff), that plaintiff existed only for the convenience of such persons in exercising their control 33 as stockholders over said Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company, that the activities of the plaintiff consisted of keeping up its corporate organization, voting the stock of said Chile Exploration Company, receiving dividends upon such stock and distributing the moneys thus received as dividends among its stockholders, that by reason of said facts plaintiff was not "carrying on or doing business" within the meaning of said act of Congress, and that plaintiff was not required by said act of Congress to pay the special excise tax imposed thereby or to render any statement or return or to comply with any regulations of the Secretary of the Treasury

or the Commissioner of Internal Revenue prescribed under authority of said act of Congress.

XXXIX. The plaintiff executed and filed said return as aforesaid under duress and under coercion of the severe penalties provided by law.

XL. Plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a penalty equal to twenty-five per centum of the amount of the tax for failure to file the return and the plaintiff had no means of securing relief from the risk of incurring such penalty except to file its returns, as aforesaid, under a protest against the filing of such returns.

XLI. Notwithstanding such protest, the Commissioner of Internal Revenue, purporting to act under the provisions of section 1000 of Title X of the revenue act of 1918, assessed a tax of \$76,375.00 against the plaintiff for the period beginning July 1, 1918, and ending June 30, 1919, and the collector of internal revenue of the
34 United States for the Second District of New York, on or about December 1, 1919, notified the plaintiff of said assessment and demanded payment of the said sum of \$76,375.00 within ten days.

XLII. On or about December 8, 1919, the plaintiff, pursuant to the laws of the United States and the regulations of the Treasury Department in such cases made and provided, filed with the defendant for transmission to the United States Commissioner of Internal Revenue, a claim for abatement of said assessment, said abatement being requested on the alleged ground that the plaintiff was a holding company whose objects and activities were exclusively restricted to holding the stock and securities of Chile Exploration Company, and that it was therefore not "carrying on or doing business" during the period beginning January 1, 1917, and ending June 30, 1919; such claim for abatement was, thereafter, on or about April 9, 1920, denied by said commissioner in the form of a decision in writing rendered by him to the plaintiff.

XLIII. Thereafter, on or about April 7, 1920, the defendant again notified the plaintiff of said assessment and demanded payment within ten days of the said sum of \$76,375, together with interest thereon at the rate of one per cent per month for four months, amounting to \$3,055.00, a total of \$79,430.00.

XLIV. The plaintiff on or about April 27, 1920, paid to the defendant the sum of \$79,430.00 in payment of said tax and interest; said payment was made to the defendant under protest and
under duress and under coercion of the severe penalties
35 provided by law and under the coercion of the said assessment of the Commissioner of Internal Revenue and the said notice and demand for payment of the tax from the defendant.

XLV. The plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a fine of one thousand dollars for doing business without payment of the tax, to a fine of ten thousand dollars for wilful refusal to pay the

tax, and to a penalty of five per centum of the tax, and interest at the rate of one per centum per month until the tax was paid, for failure to pay the tax on time, and the plaintiff's officers and employees would be subject to other severe fines and penalties, and the plaintiff had no means of securing relief from the risk of incurring such fines and penalties except to pay under protest the tax purporting to be assessed against it upon the returns filed by it, as aforesaid.

XLVI. On or about April 30, 1920, and within two years from the date of the payment of said tax, and prior to the institution of this action, the plaintiff, pursuant to the laws of the United States and the regulations of the Treasury Department in such cases made and provided, duly appealed to the United States Commissioner of Internal Revenue for refunding of the amount so paid under protest by the plaintiff for said tax as aforesaid, said refund being requested on the alleged ground that the plaintiff was a holding company whose objects and activities were and are exclusively restricted to holding the stock and securities of Chile Exploration Company and that plaintiff was therefore "not carrying on or doing business"

36 during the period from January 1, 1917, to June 30, 1919, both dates inclusive, and was not subject to the capital stock tax imposed by section 407 of Title IV of the revenue act of 1916, or by section 1000 of Title X of the revenue act of 1918. Said appeal was thereafter, on or about May 27, 1920, denied by said commissioner in the form of a decision in writing rendered by him to the plaintiff.

XLVII. By reason of the premises, the defendant received said sum of \$79,430.00 paid by the plaintiff, as aforesaid, for the use and benefit of the plaintiff, and said sum received by the defendant as aforesaid, is still retained by the defendant, and said defendant has refused to pay the same or any part thereof to the plaintiff, although payment thereof has been duly demanded.

For a fourth cause of action

XLVIII. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs I, II, and IV of the complaint herein, with the same force and effect as if the same were set forth herein in full.

XLIX. This is an action to recover back taxes alleged by the plaintiff to have been erroneously and illegally assessed against the plaintiff and paid by it under protest and arising under Title X, sec. 1000 of the revenue act of 1918 (40 Stat. 1057, 1126).

L. The plaintiff was organized for the principal purpose of providing a means whereby money could be borrowed from investors in sums sufficiently large to develop the mining property of said Chile
37 Exploration Company. At all times hereinafter mentioned it was impracticable for said Chile Exploration Company to borrow such money directly from investors because of said provisions of the laws of the Republic of Chile making it impossible for said Chile Exploration Company effectively to mortgage its property

as security for loans. Satisfactory security for such loans could be provided, however, by a pledge as collateral security of the stock of said Chile Exploration Company. The plaintiff was accordingly organized on or about April 16, 1913, for the principal purpose of holding the capital stock of said Chile Exploration Company and pledging such capital stock as security for bond issues, the proceeds of which should be used, loaned, and advanced from time to time to furnish the necessary capital to develop the mining property of said Chile Exploration Company. At all times hereinafter mentioned, the plaintiff has continued to own all of the issued and outstanding capital stock of said Chile Exploration Company. During the period beginning July 1st, 1919, and ending June 30th, 1920, the plaintiff borrowed money from investors by the issuance of bonds under a trust agreement, a copy of which is attached hereto and marked "Exhibit A." By section 4 of article two of said trust agreement, the plaintiff covenanted that the proceeds of the bonds issued as series A, which are the only bonds which have been issued thereunder, should be used only (a) to pay off certain indebtedness existing on April 1st, 1917, and (b) for the acquisition, construction, or improvement (properly chargeable to capital account), after April 1st, 1917, of property necessary or useful in connection with the mining, refining, or marketing of copper or copper ore derived from property owned by said Chile Exploration Company. In addition to the above a certain other issue of bonds made in the year 1913 was still outstanding in the years 1919 and 1920.

LI. Chile Exploration Company duly paid the tax-assessed against it pursuant to the provisions of section 1000 of Title X of the revenue act of 1918, for the period beginning July 1, 1919, to June 30, 1920.

LII. During the preceding taxable year, to wit: July 1st, 1918, to June 30th, 1919, the plaintiff's activities were as stated in Paragraph XXXV of this complaint, each and every allegation of which the plaintiff repeats and realleges with the same force and effect as if the same were set forth herein in full.

During the period from July 1, 1919, to June 30, 1920, both dates inclusive, the activities of the plaintiff without any omissions or exceptions consisted solely of the following:

(1) The stockholders of plaintiff held an annual meeting; the directors of plaintiff held various meetings; directors and officers were duly chosen by appropriate action of the stockholders and directors; stock books for the transfer of plaintiff's capital stock were kept; corporate and accounting records were kept and such other acts performed and expenses paid as were necessary for the maintenance of the corporate existence and organization of the plaintiff; and the plaintiff maintained an office for the purpose of the activities set forth in this paragraph and paid the ordinary and necessary expenses of maintaining such office.

(2) Plaintiff owned and voted by proxy the entire capital stock of said Chile Exploration Company and thus elected the directors of said Chile Exploration Company, but plaintiff did not act as purchasing or selling agent of said Chile Exploration Company.

(3) Plaintiff had outstanding collateral trust bonds having a par value of \$15,000,000 secured by a pledge of the entire capital stock of said Chile Exploration Company. These bonds had been issued in 1913 and the proceeds therefrom had been paid prior to January 1, 1917, to said Chile Exploration Company as an additional investment in said company. During the year ending June 30, 1919, the plaintiff duly paid the interest upon such bonds. The plaintiff also had outstanding collateral trust bonds having a par value of \$35,000,000 which had been issued on April 1, 1917, which had been paid for in part only by subscribers, and the plaintiff received further payments thereon from subscribers and duly paid the interest upon such bonds. The limited purposes for which the proceeds of said 1917 issue could be used under said trust agreement and the limited purposes for which such proceeds were used are set forth in Paragraph VII of this complaint, each and every allegation of which the plaintiff repeats and realleges with the same force and effect as if the same were set forth herein in full.

(4) The plaintiff owned certain accounts and notes representing amounts previously loaned to said Chile Exploration Company and during the year ending June 30, 1920, it received from said Chile Exploration Company payments of interest upon such notes and loans and payments of principal upon such loans, as is more particularly shown by Exhibit K hereinafter referred to.

40 (5) During the year ending June 30, 1920, plaintiff made loans on open account at interest, to said Chile Exploration Company for the limited purposes specified below. Such loans were made from the proceeds of said 1917 bond issue. All of said advances were used by Chile Exploration Company, as required by subdivision (b) of section 4 of article two of said trust agreement, to reimburse itself for expenditures made solely for the acquisition, construction, or improvement (properly chargeable to capital account) of property necessary or useful in connection with the mining, refining, or marketing of copper or of copper ore derived from the mineral deposits owned by said Chile Exploration Company. The Guaranty Trust Company of New York, with whom the proceeds of the 1917 bond issue were deposited on special account, was directed on June 4, 1917, that after honoring checks for the payment of specified floating indebtedness of plaintiff and specified expenses of said 1917 bond issue, it should honor checks on this special account only when accompanied by a letter signed by the president or vice president of the plaintiff stating that the proceeds of such check would be used for one or more of the purposes specified

in subdivision (b), section 4, article two of said trust agreement dated April 1, 1917, and plaintiff agreed to furnish and did furnish statements showing the application of the proceeds of such checks to the purposes specified. Such advances were made at the request of Chile Exploration Company when it needed funds for the limited purposes specified and each check to said exploration company on said special account was accompanied by a letter to the Guaranty

Trust Company of New York stating that the check was
41 drawn pursuant to the letter of June 4, 1917, and that the proceeds thereof would be used for the purposes specified in subdivision (b) of section 4 of article two of said trust agreement. The total sum advanced to said Chile Exploration Company during the year ending June 30, 1920, was \$700,000. The amount charged by that company to construction of plant during this period was \$2,812,755.35. The date, amount, and nature of each receipt by plaintiff from, and of each payment by plaintiff to, said Chile Exploration Company during the year ending June 30, 1920, are shown in a schedule attached hereto and marked "Exhibit K" and made a part of this complaint.

(6) The plaintiff had certain surplus funds received from said 1917 bond issue which were in excess of the amounts which it was deemed proper and expedient to advance during said period, to said Chile Exploration Company for the limited purposes specified in said subdivision (b), section 4, article two of said trust agreement, by which said 1917 bond issue was secured. A portion of such funds was invested by plaintiff in Liberty bonds. The major portion of such funds was on deposit with the Guaranty Trust Company of New York, a corporation, or with the Central Union Trust Company, a corporation. The plaintiff authorized the said Guaranty Trust Company of New York and said Central Union Trust Company to make loans out of such funds for the account and risk of the plaintiff. Such loans were demand loans, commonly known as "call loans" which were secured by collateral and which yielded a higher rate of interest than that paid upon bank deposits. The Guaranty Trust Company of New York and the Central Union

Trust Company attended to all the details in connection with
42 the making and calling of such loans and the deposit of collateral security. The plaintiff was currently advised of the names of all borrowers, the amount loaned to each and the collateral security deposited by each with said Guaranty Trust Company of New York or said Central Union Trust Company. If the collateral security or the borrower was not satisfactory, plaintiff notified said Guaranty Trust Company of New York for said Central Union Trust Company to call the loan.

The maximum amount of said call loans during the year ending June 30, 1920, was \$9,100,000. Attached hereto and marked "Exhibit L" is a statement showing the monthly debit balances in the

call loan account on plaintiff's books during the year ending June 30, 1920. On information and belief the records of said Guaranty Trust Company of New York and of said Central Union Trust Company show that during the year ending June 30, 1920, 224 loans aggregating \$37,200,000 were made and 180 loans aggregating \$29,100,000 were called or paid. Attached hereto and marked "Exhibit M" is a statement for the year ending June 30, 1920, showing by months the number of loans made and the aggregate amount thereof and the number of loans called and the aggregate amount thereof. Plaintiff is informed and believes that Exhibit M is in accordance with the records of said Guaranty Trust Company of New York and said Central Union Trust Company. During the year ending June 30, 1920, the plaintiff received \$332,366.90 interest on said call loans. Attached hereto and marked "Exhibit N" is a schedule showing by months the amount of interest so received.

(7) The assets and liabilities of the plaintiff as shown by its books on December 31, 1918 were as stated on "Exhibit A" of the return for the taxable period ending June 30, 1920, a copy of which is attached hereto and marked "Exhibit O." This is the balance sheet for the close of the last fiscal year of plaintiff ending prior to July 1, 1919.

LIII. The plaintiff, on or about July 31, 1919, executed under oath and filed with the collector of internal revenue for the second district of New York, a return upon official Form No. 707, setting forth the estimated fair value of the plaintiff's capital stock for the fiscal year ended December 31, 1918, and other information, in the manner prescribed by the regulations of the Commissioner of Internal Revenue and the Secretary of the Treasury for corporations subject to the provisions of section 1,000, Title X, of the revenue act of 1918, and the tax thereby imposed; the plaintiff attached to the return so executed and filed a statement in writing addressed to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the collector of internal revenue for the second district of New York, setting forth that said return was executed by the plaintiff and filed by it with the said collector of internal revenue under protest and duress. A copy of said return and protest is attached hereto and marked "Exhibit O."

LIV. At the time of filing said return, as aforesaid, the plaintiff protested, as aforesaid, to the collector of internal revenue against being required to make said return and against the assessment of any tax based thereon or otherwise, against the plaintiff, under the provisions of Title X of the revenue act of 1918, and in said written protest (Exhibit O) contended that the plaintiff during the period beginning January 1, 1919, and ending June 30, 1920, was engaged solely in representing the interests of a large number of persons in the business of said Chile Exploration Company, all of whose stock was owned by the plaintiff; plaintiff existed only for

the convenience of such persons, in exercising their control as stockholders over said Chile Exploration Company, and receiving profits arising from the business of said Chile Exploration Company; the activities of the plaintiff consisted of keeping up its corporate organization, voting the stock of said Chile Exploration Company, receiving dividends upon such stock and distributing the moneys thus received as dividends among its own stockholders; by reason of said facts, plaintiff was not "carrying on or doing business" within the meaning of Title X of the revenue act of 1918, and that the plaintiff was not required by said act to pay a special excise tax imposed thereby or to render any statement or return or to comply with any regulations of the Secretary of the Treasury or the Commissioner of Internal Revenue, prescribed under authority of said act of Congress.

LV. The plaintiff executed and filed said return as aforesaid under duress and under coercion of the severe penalties provided by law.

LVI. Plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a penalty equal to twenty-five per centum of the amount of the tax for failure to file the return and the plaintiff had no means of securing relief from the risk of incurring such penalty except to file its returns, as aforesaid, under a protest against the filing of such returns.

45 LVII. Notwithstanding such protest, the Commissioner of Internal Revenue, purporting to act under the provisions of section 1,000 of Title X of the revenue act of 1918, assessed a tax of \$65,241.00 against the plaintiff for the period beginning July 1, 1919, and ending June 30, 1920, and the collector of internal revenue of the United States for the Second District of New York, on or about December 1, 1919, notified the plaintiff of said assessment and demanded payment of the said sum of \$65,241.00 within ten days.

LVIII. On or about December 8, 1919, the plaintiff, pursuant to the laws of the United States and regulations of the Treasury Department in such cases made and provided, filed with the defendant for transmission to the United States Commissioner of Internal Revenue, a claim for abatement of said assessment, said abatement being requested on the alleged ground that the plaintiff was a holding company whose objects and activities were exclusively restricted to holding the stock and securities of Chile Exploration Company, and that it was therefore not "carrying on or doing business" during the period beginning July 1, 1918, and ending June 30, 1920; such claim for abatement was, thereafter, on or about April 9, 1920, denied by said commissioner in the form of a decision in writing rendered by him to the plaintiff.

LIX. Thereafter, on or about April 7, 1920, the defendant again notified the plaintiff of said assessment and demanded payment within ten days of the said sum of \$65,241.00, together with interest

thereon at the rate of one per cent per month for four months, amounting to \$2,609.64, a total of \$67,850.64.

46 LX. The plaintiff on or about April 27, 1920, paid to the defendant the sum of \$67,850.64 in payment of said tax and interest; said payment was made to the defendant under protest and under duress and under coercion of the severe penalties provided by law and under the coercion of the said assessment of the Commissioner of Internal Revenue and the said notice and demand for payment of the tax, from the defendant.

LXI. The plaintiff (if its contention as to its liability to said tax under said act of Congress was overruled) would be subject to a fine of one thousand dollars for doing business without payment of the tax, to a fine of ten thousand dollars for willful refusal to pay the tax, and to a penalty of five per centum of the tax, and interest at the rate of one per centum per month until the tax was paid, for failure to pay the tax on time, and the plaintiff's officers and employees would be subject to other severe fines and penalties, and the plaintiff had no means of securing relief from the risk of incurring such fines and penalties except to pay under protest the tax purporting to be assessed against it upon the returns filed by it, as aforesaid.

LXII. On or about April 30, 1920, and within two years from the date of the payment of said tax, and prior to the institution of this action, the plaintiff, pursuant to the laws of the United States and the regulations of the Treasury Department in such cases made and provided, duly appealed to the United States Commissioner of Internal Revenue for the refunding of the amount so paid under protest by the plaintiff for said tax as aforesaid, said refund
47 being requested on the alleged ground that the plaintiff was a holding company whose objects and activities were and are exclusively restricted to holding the stock and securities of Chile Exploration Company and that plaintiff was therefore "not carrying on or doing business" during the period from July 1, 1918, to June 30, 1920, both dates inclusive, and was not subject to the capital stock tax imposed by section 407 of Title IV of the revenue act of 1916, or by section 1,000 of Title X of the revenue act of 1918. Said appeal was thereafter, on or about May 27, 1920, denied by said commissioner in the form of a decision in writing rendered by him to the plaintiff.

LXIII. By reason of the premises, the defendant received said sum of \$67,850.64 paid by the plaintiff, as aforesaid, for the use and benefit of the plaintiff, and said sum received by the defendant, as aforesaid, is still retained by the defendant, and said defendant has refused to pay the same or any part thereof to the plaintiff, although payment thereof has been duly demanded.

WHEREFORE plaintiff demands judgment against the defendant for the sum of \$213,188.64, with interest as follows: On \$21,231.50 from the 17th day of April, 1917; on \$44,676.50 from the 31st day

of October, 1917; on \$79,430.00 from the 27th day of April, 1920, and on \$67,850.64 from the 27th day of April, 1920, together with the costs and disbursements of this action.

ROOT, CLARK, BUCKNER & HOWLAND,
Attorneys for Plaintiff.

Office and post-office address, 31 Nassau Street, Borough of Manhattan, New York City.

48 STATE OF NEW YORK,
County of New York, ss:

William E. Bennett, being duly sworn, deposes and says: That he is the secretary of Chile Copper Company, the plaintiff in the above-entitled action. That he has read the foregoing complaint and knows the contents thereof and the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the plaintiff and is made by deponent is that the plaintiff is a foreign corporation. That the sources of deponent's information and the grounds of his belief as to all matters not therein stated upon his knowledge are statements and reports of other officers and employees of the plaintiff corporation, and statements and reports of the attorneys for the plaintiff and documents and correspondence in the possession of deponent.

WILLIAM E. BENNETT.

Sworn to before me this 15th day of February, 1923.

[SEAL.]

R. C. KLUGESCHEID,
Notary Public.

New York County No. 324. Com. expires Nov. 30, 1924.

49 *Stipulation re Exhibit "A"*

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that Exhibit "A" being a printed copy of trust agreement dated April 1, 1917, between Chile Copper Company, Guaranty Trust Company of New York, trustee, and Chile Exploration Company, need not be printed in the transcript of record, but may be handed up to the court on the argument by either of the parties.

Dated August 22, 1924.

ROOT, CLARK, BUCKNER & HOWLAND,
Attorneys for Defendant in Error.
WM. HAYWARD, *U. S. Attorney,*
Attorney for Plaintiff in Error.

So ordered.

MANTON, *U. S. C. J.*

50

"Exhibit B" to second amended complaint

CHILE COPPER COMPANY

STATEMENT OF ADVANCES TO CHILE EXPLORATION COMPANY

January 1, 1917, to June 30, 1918:

		Amount
January	11, 1917	\$250,000
June	7, "	500,000
"	21, "	500,000
July	9, "	500,000
"	24, "	500,000
"	24, "	500,000
September	27, "	1,000,000
June	30, 1918	1,000,000

Total, January 1, 1917, to June 30, 1918..... 4,750,000

STATEMENTS OF AMOUNTS PAID BY CHILE EXPLORATION COMPANY

January 1, 1917, to June 30, 1918:

		Amount
February	2, 1917	\$25,000.00 (A)
April	17, "	50,000.00 (A)
"	30, "	525,000.00 (A)
May	31, "	11,371.06 (A)
October	30, "	575,000.00 (A)
November	30, "	525,000.00 (A)
May	1, 1918	525,000.00 (B)
"	29, "	25,000.00 (B)
June	12, "	500,000.00 (B)

Total, January 1, 1917, to June 30, 1918..... 2,761,371.06

51 Note: Items marked (A) aggregate \$1,711,371.06, applied as follows:

To interest	\$541,300.70
To dividend 1918	1,170,070.36

Items marked (B) aggregating \$1,050,000.00, applied as follows:

To 1918 interest on notes	\$840,000.00
To 1918 interest on loans	151,909.76
To 1917 dividends	58,090.24

Note: During this period Chile Exploration Company issued to Chile Copper Company certain notes to the sum of \$14,000,000. The loans account was credited with this amount and it is applied as follows:

To cash advances	\$13,320,000
Bond discount	680,000

52

"Exhibit C" to second amended complaint

CHILE COPPER COMPANY

STATEMENT OF ASSETS AND LIABILITIES

December 31, 1916

ASSETS

Investment in Chile Exploration Company
stock and properties:

By original stock issue	\$94,984,064.78
By proceeds 7% convertible bonds	15,000,000.00
	<u>\$109,984,064.78</u>

Chile Exploration Company—Loan account.....	\$11,405,733.45
Accounts receivable.....	5,836.57
Cash.....	11,119.16
	<u>121,406,753.96</u>

LIABILITIES

Capital stock:	
Authorized..... 4,400,000 shares at \$25..	\$110,000,000.00
Reserved for conversion of bonds.....	600,000 shares at \$25.. 15,000,000.00
	<u>3,800,000 shares at \$25.....</u>
	\$95,000,000.00
Collateral trust 7% 10-year convertible gold bonds.....	15,000,000.00
Notes payable and loans.....	11,220,000.00
Accrued interest, taxes, etc.....	186,753.96
	<u>121,406,753.96</u>

53

"Exhibit D" to second amended complaint

CAPITAL STOCK TAX

RETURN FOR SPECIAL EXCISE TAX ON CORPORATIONS ORGANIZED IN THE UNITED STATES

(Sec. 407, Title IV, act of Sept. 8, 1916.)

Return of fair value of stock for the fiscal year ended June 30, 191---, by Chile Copper Company, holding company, located at 120 Broadway, New York, New York.

The address must be that of the principal place of business of the corporation.

If no figures are to be extended opposite any item in the return, the word "None" should be inserted.

Corporations, joint-stock companies or associations, or insurance companies, organized for profit in the United States.

1. Total number of shares of stock now outstanding 3,800,000.
 2. Par value of shares, \$25.00.
 3. Par value of total capital stock now outstanding, \$95,000,000.
 4. Amount of surplus, none.
 5. Amount of undivided profits, \$2,582,050.22 deficit.
 6. Average fair value per share of stock computed as follows (see par. 10 of Instructions or art. 6 of Regulations):
- 54 Case I.—Average market value per share of stock listed on New York Stock Exchange during preceding fiscal year, computed as follows:

Highest price quoted—

July, 1915.....	\$19.00
Aug., 1915.....	19.00
Sept., 1915.....	19.50

Oct., 1915.....	\$26.50
Nov., 1915.....	26.00
Dec., 1915.....	25.00
Jan., 1916.....	23.50
Feb., 1916.....	23.375
Mar., 1916.....	22.125
Apr., 1916.....	22.75
May, 1916.....	20.75
June, 1916.....	21.00

Average..... \$22.375

Case II.—Stock not listed on any exchange. Average market value per share computed from sales made during preceding fiscal year:

Highest sale price—

(Blank)

Case III.—Information upon which corporation may estimate, subject to approval of collector and commissioner, the fair value of stock that *that* is not listed on any exchange and of which no sales have been made during preceding fiscal year, July 1, 191—, to June 30, 191—, or if sales have been made and price is unknown:

(Blank)

Estimated fair value per share, \$22.375.

- 55 7. Total number of shares of stock outstanding on June 30, 1916, 3,800,000,000.
8. Fair value of total capital stock for preceding fiscal year ended June 30, 1916 (No. 6, multiplied by No. 7)..... \$85,025,000.00
2. Deduction allowed by law..... 99,000.00
-
10. Difference, amount of fair value of stock over \$99,000.00 upon which tax should be computed..... \$84,926,000.00
11. Tax at rate of 50 cents per year for each full \$1,000.00 (see par. 13 of Instructions) one-half year, \$21,231.50.
12. Amount of munitions tax, if any, paid under Title III of this act since making the last previous return, \$..... None.
13. Difference, amount of tax due, \$21,231.50.

We, Harry F. Guggenheim, vice president, and C. K. Lipman, Secy. of the above-named company, whose return for special excise tax is herein set forth, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report and

in any additional list or lists attached to or accompanying this return are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular.

(Signed) HARRY F. GUGGENHEIM,
Vice President.

(Signed) C. K. LIPMAN, *Secy.*

Sworn to and subscribed before me this 28th day of Feby., 1917.

(Signed) S. D. HOLINE,
Notary Public.

(SEAL)

56 To the Secretary of the Treasury, the Commissioner of Internal Revenue, and the Collector of Internal Revenue for the Second District of New York:

SIR: The undersigned, Chile Copper Company, having under protest and duress, executed and caused to be verified the annexed "Return for special excise tax on corporations organized in the United States" upon official Form 707, as prescribed by the United States Treasury Department, protests against being required to make said return and against the assessment of any tax based thereon or otherwise, against Chile Copper Company, under the provisions of section 407, Title IV of the act of Congress approved September 8, 1916, on the ground that Chile Copper Company is engaged solely in representing the interests of a large number of persons in the business of Chile Exploration Company (all of whose stock is owned by Chile Copper Company); that Chile Copper Company exists only for the convenience of such persons in exercising their control as stockholders over said Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company; that its activities are limited to keeping up its corporate organization, voting the stock of said Chile Exploration Company, receiving dividends upon such stock and distributing the moneys thus received as dividends among its own stockholders; that in view of the facts above set forth Chile Copper Company was not

57 "organized for profit" and is not "carrying on or doing business" within the meaning of said section 407 of Title IV of the said act of Congress, and is not required by said act of Congress to pay the special excise tax imposed thereby or to render any statement or return, or to comply with any regulations of the Secretary of the Treasury, or the Commissioner of Internal Revenue, prescribed under authority of said act of Congress.

Respectfully submitted.

(Signed) CHILE COPPER COMPANY,
By HARRY F. GUGGENHEIM,
Vice President.

Attest:

(Signed) C. K. LIPMAN,
Secretary.

Address: 120 Broadway, New York City.

58

"Exhibit E" to second amended complaint

Form 707—Revised April, 1917

CAPITAL STOCK TAX

RETURN FOR SPECIAL EXCISE TAX ON CORPORATIONS ORGANIZED IN THE
UNITED STATES

(Sec. 407, Title IV, act Sept., 1916)

RETURN OF FAIR VALUE OF STOCK FOR THE FISCAL YEAR ENDED JUNE 30,
1917Name Chile Copper Company,
Address 120 Broadway,
New York, N. Y.

(Kind of business)

1. Holding company.

2. Par value of common stock----- \$95,000,000.00

Outstanding June 30, 1917

4. Total par value of capital stock----- \$95,000,000.00

5. Amount of surplus----- None

6. Amount of undivided profits----- None

7. Average fair value of stock per share to be computed as indicated
in the cases shown below :

59

Case 1

1916	
July	\$19.875
Aug	19.75
Sept	22.00
Oct	23.00
Nov	32.75
Dec	25.25
1917	
Jan	25.00
Feb	23.00
Mar	24.3
Apr	22.50
May	23.625
June	21.50
Average	\$23.54

Total number of shares outstanding June 30, 1917:

8. Common stock (No. shares 3,800,000) multiplied by average
value as above \$89,452,000.00.

10. Fair value of total capital stock for preceding fiscal year ended June 30, 1917-----	\$89,452,000.00
11. Deduction allowed by law-----	99,000.00
12. Amount of fair value of stock over \$99,000.00---	89,353,000.00
13. Tax at rate of 50 cents per year for each full \$1,000.00-----	44,676.50
15. Difference, amount of tax due-----	44,676.50
Total tax and penalty-----	44,676.50

60 We, _____, president, and _____, treasurer of the above-named company, whose return for special excise tax is herein set forth, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report and in any additional list or lists attached to or accompanying this return, are to his best knowledge and belief and from such information as he has been able to obtain, true and correct.

WILLIAM C. POTTER,
Vice President.

L. FREDERICK,
Treasurer.

Sworn to and subscribed before me this 31st day of Aug., 1917.
S. D. HOLINER.

To the Secretary of the Treasury, the Commissioner of Internal Revenue, and the Collector of Internal Revenue, for the Second District of New York

Sirs: The undersigned, Chile Copper Company, having under protest and duress, executed and caused to be verified the annexed "Return for special excise tax on corporations organized in the United States" upon official Form No. 707, as prescribed by the United States Treasury Department, protests against being required to make said return and against the assessment of any tax based thereon or otherwise, against Chile Copper Company, under the provisions of section 407, Title IV of the act of Congress approved September 8, 1916, on the ground that Chile Copper Company is engaged solely in representing the interests of a large number of persons in the business of Chile Exploration Company (all of whose stock is owned by Chile Copper Company); that Chile Copper Company exists only for the convenience of such persons in exercising their control as stockholders over said Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company; that its activities are limited to keeping up its corporate organization, voting the stock of said Chile Exploration Company, receiving dividends upon such stock and distributing the moneys thus received among its own stockholders; that in view of the facts above set forth Chile Copper Company was not "organized for profit" and is not "carry-

ing on or doing business" within the meaning of said section 407 of Title IV of the said act of Congress, and is not required by said act of Congress to pay the special excise tax imposed thereby or to render any statement or return, or to comply with any regulations of the Secretary of the Treasury, or the Commissioner of Internal Revenue, prescribed under authority of said act of Congress.

Respectfully submitted.

CHILE COPPER COMPANY,
By (signed) WILLIAM C. POTTER,
Vice president.

Attest:

(Signed) C. K. LIPMAN,
Secretary.

Address: 120 Broadway, New York City.

62 "Exhibit F" to second amended complaint

CHILE COPPER COMPANY

STATEMENT OF ADVANCES TO CHILE EXPLORATION COMPANY

July 1, 1918, to June 30, 1919:

		Amount
July	31, 1918	\$1, 000, 000. 00
December	31, "	1, 000, 000. 00
January	31, 1919	150, 000. 00
February	3, "	500, 000. 00
"	7, "	250, 000. 00
"	18, "	250, 000. 00
"	28, "	150, 000. 00
March	10, "	350, 000. 00
"	11, "	50, 000. 00
"	13, "	150, 000. 00
"	20, "	150, 000. 00
"	24, "	300, 000. 00
"	31, "	150, 000. 00
April	1, "	100, 000. 00
"	4, "	175, 000. 00
"	11, "	200, 000. 00
"	22, "	725, 000. 00
May	2, "	100, 000. 00
"	6, "	165, 000. 00
"	9, "	100, 000. 00
"	12, "	400, 000. 00
"	15, "	48, 000. 00
June	1, "	100, 000. 00
"	3, "	75, 000. 00
"	4, "	50, 000. 00
"	9, "	250, 000. 00
"	14, "	100, 000. 00
"	16, "	100, 000. 00

Total, July 1, 1918, to June 30, 1919..... 7, 136, 000. 00

63 STATEMENT OF AMOUNTS PAID BY CHILE EXPLORATION COMPANY

July 1, 1918, to June 30, 1919:

	Amount	
November 30, 1918.....	\$75,000.	(A)
December 3, ".....	50,000.	(A)
June 11, 1919.....	5,000.	(B)

Total, July 1, 1918, to June 30, 1919.....130,000.

NOTE: Items marked (A) amounting to \$125,000 represent balance due on 1917 dividend.

Item marked (B), \$5,000, applied to arrears of interest.

"Exhibit G" to second amended complaint

CHILE COPPER COMPANY

Statement showing monthly debit balances in call loan account for year ending June 30, 1919

July 31, 1918.....	None.
August 31, 1918.....	\$5,000,000.00
September 30, 1918.....	5,000,000.00
October 31, 1918.....	5,000,000.00
November 30, 1918.....	5,000,000.00
December 31, 1918.....	5,000,000.00
January 31, 1919.....	5,000,000.00
February 28, 1919.....	4,500,000.00
March 31, 1919.....	2,900,000.00
April 30, 1919.....	1,900,000.00
May 31, 1919.....	450,000.00
June 30, 1919.....	700,000.00

64 *"Exhibit H" to second amended complaint*

CHILE COPPER COMPANY

(From records of Guaranty Trust Company of New York)

Year	Month	Loans placed		Loans called	
		Number	Amount	Number	Amount
1918	August.....	34	\$6,120,000	8	\$1,170,000
	September.....	2	650,000	28	5,600,000
	October.....	37	8,550,000	16	3,550,000
	November.....	16	2,550,000	15	2,850,000
	December.....	11	1,250,000	7	1,275,000
1919	January.....	8	1,525,000	9	1,525,000
	February.....	3	650,000	4	625,000
	March.....	5	700,000	18	2,425,000
	April.....	2	600,000	5	1,475,000
	May.....	6	1,200,000	12	2,650,000
	June.....	17	2,250,000	13	1,900,000
		141	26,045,000	135	25,045,000

65 "Exhibit I" to second amended complaint

CHILE COPPER COMPANY

STATEMENT OF INTEREST ON CALL LOANS

Fiscal year July 1st, 1918-June 30th, 1919:	Amount
July, 1918-----	
August, 1918-----	\$1,680.93
September, 1918-----	41,932.23
October, 1918-----	12,688.36
November, 1918-----	21,900.09
December, 1918-----	17,628.41
January, 1919-----	28,839.37
February, 1919-----	19,277.81
March, 1919-----	23,167.68
April, 1919-----	16,058.23
May, 1919-----	8,638.77
June, 1919-----	2,767.32
	<hr/>
	194,579.20

66 "Exhibit J" to second amended complaint

Treasury Department,
U. S. Internal Revenue.

Form 707—Revised June, 1918.

(To be stamped by collector showing district and date received.)

CAPITAL STOCK TAX

RETURN FOR SPECIAL EXCISE TAX ON CORPORATIONS ORGANIZED IN THE
UNITED STATES

(Sec. 407, Title IV, act Sept. 8, 1916)

RETURN OF FAIR VALUE OF CAPITAL STOCK FOR THE FISCAL YEAR ENDED
JUNE 30, 1918

Tax payable in advance for the year ending June 30, 1919. Care-
fully read all instructions before making return

(Do not paste riders to face of return)

1. Name, Chile Copper Company.
2. Address, 120 Broadway, New York, N. Y.
3. Nature of business in detail, Holding company.
4. Incorporated or organized in State of Delaware.
5. Date of incorporation or organization, April 16th, 1913.
6. Capital and surplus as of close of fiscal year ended Dec. 31, 1917. (See Special Instructions No. 2, page 4 hereof.)

Capital stock outstanding:

	Number of shares	Par value per share	Total par value
7. Common	3,800,000	\$25.00	\$95,000,000.00
8. First preferred			
9. Second preferred			
10. Total			95,000,000.00
11. Amount of surplus			3,185,891.38
12. Amount of undivided profits			
13. Grand total			91,814,108.62

COMPUTATION OF TAX

(Complete Exhibits A, B, and C and read all instructions before computing the tax)

14. Fair value of total capital stock for fiscal year determined by exhibit	\$76,380,000.00
15. Deduction allowed by law	5,000.00
16. Amount of fair value of capital stock over \$99,000	76,375,000.00
17. Tax at rate of 50 cents per year for each full \$1,000	76,375.00
68 18. Amount of munitions tax, if any, paid under Title III of act of September 8, 1916, since making last return	
19. Difference (net amount of tax due)	
20. Penalty	
21. Total tax and penalty	

Space below not to be used by taxpayer.

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Exhibit A to Exhibit J

(See Special Instructions No. 4, page 4)

Condensed balance sheet as of

Debits and assets, books of account:

Real estate	
Buildings	
Machinery	
Cash	\$535,922.14
Accounts receivable	1,544,341.34
Notes receivable	14,000,000.00
Securities	108,668,064.78
Inventory	
Deferred assets	
Other assets	
Treasury bonds	
Treasury stock	
Deferred charges	
Totals	124,748,328.26

69	Credits and liabilities, books of account:	
	Bonded debt	\$32,665,000.00
	Mortgages	
	Accounts payable	269,219.64
	Notes payable	
	Deferred liabilities	
	Other liabilities	
	Reserves	
	Depreciation	
	Depletion	
	Subtotal	32,934,219.64
	Deferred credits	
	Capital stock	95,000,000.00
	Common	
	Preferred	
	Surplus	
	Profit and loss	3,185,891.38
	Totals	124,748,328.26

Recapitulation of Exhibit A

Total debits and assets after deducting debit items not actual assets	\$124,748,328.26
Less total of credits and liabilities after deducting capital stock, surplus, and other credits not actual liabilities	32,934,219.64
Difference (value of total capital stock reflected by Exhibit A)	91,814,108.62

70 *Exhibit B to Exhibit J*

(See Special Instructions No. 5, page 4)

Quotations or outside sales prices

Month	Number of common shares outstanding	Price
January	3,800,000	\$25.24
February	3,800,000	22.43
March	3,800,000	24.60
April	3,800,000	22.91
May	3,800,000	22.08
June	3,800,000	22.08
July	3,800,000	20.56
August	3,800,000	18.99
September	3,800,000	17.37
October	3,800,000	16.45
November	3,800,000	14.25
December	3,800,000	14.30
Average	3,800,000	20.10

Recapitulation of Exhibit B

Average sale value of common stock per share, \$20.10, multiplied by 3,800,000 average number of shares -----	\$76,380,000.00
Average sale value of first preferred stock per share, \$-----, multiplied by ----- average number of shares -----	
Average sale value of second preferred stock per share, \$-----, multiplied by ----- average number of shares -----	
Total (value of total capital stock reflected by Exhibit B) -----	

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Exhibit C to Exhibit J

(See Special Instructions No. 6, page 4)

Annual income

Fiscal year ended—	Net income	Adjusted income
1913 -----	\$191,683.97	\$191,683.97
1914 -----	658,761.49	658,761.49
1915 -----	1,004,792.40	1,004,692.40
1916 -----	1,121,347.00	1,121,347.00
1917 -----	59,315.61	59,315.61
Average -----	607,180.09	607,180.09

Recapitulation of Exhibit C

Average annual income as adjusted -----
 Capitalized at ----- per cent
 (value of total capital stock reflected by Ex-
 hibit C) -----

72 To the Secretary of the Treasury, the Commissioner of Internal Revenue, and the Collector of Internal Revenue, for the Second District of New York.

SIRS: The undersigned, Chile Copper Company, having under protest and duress executed and caused to be verified the annexed "Capital Stock Tax Return" upon Form No. 707 as directed by the United States Treasury Department, protests against being required to make said return and against the assessing of any tax based thereon or otherwise against Chile Copper Company under the provisions of section 407, Title IV of the act of Congress approved September 8, 1916, said title being commonly called the capital stock tax act, on the ground that at all times both before July 1, 1917, between July 1, 1917, and June 30, 1918, and after June 30, 1918, Chile Copper Company was engaged solely in representing the interests of a large number of persons in the business of Chile Exploration Company, all of whose stock is owned by Chile Copper Company; that Chile Copper Company exists only for the convenience of such persons in exercising their control as

stockholders over said Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company; that its activities are and have been limited to keeping up its corporate organization, voting the stock of said Chile Exploration Company, holding said stock and the other securities of

Chile Exploration Company, receiving dividends upon such
 73 stock and distributing the moneys thus received among its own stockholders; that Chile Copper Company is not and has not been "carrying on or doing business" within the meaning of said title of said act of Congress, and is not required by said title of said act of Congress to pay any tax imposed thereby or to render any statement or return or to comply with any regulations of the Secretary of the Treasury or of the Commissioner of Internal Revenue prescribed under the authority of said act of Congress.

Respectfully submitted.

CHILE COPPER COMPANY,

By _____,
Asst. Treasurer.

Address 120 Broadway, New York City.

74 *"Exhibit K" to second amended complaint*

CHILE COPPER COMPANY

STATEMENT OF ADVANCES TO CHILE EXPLORATION COMPANY

July 1, 1919, to June 30, 1920:		Amount
July	9, 1919	\$100,000
"	11, "	150,000
"	16, "	100,000
"	29, "	100,000
August	5, "	50,000
October	1, "	200,000
Total July 1, 1919, to June 30, 1920		700,000

STATEMENT OF AMOUNTS REPAYED BY CHILE EXPLORATION COMPANY

July 1, 1919, to June 30, 1920:		Amount
September	11, 1919	\$500,000
"	22, "	300,000
"	24, "	300,000
"	29, "	800,000
November	1, "	500,000
April	1, 1920	1,000,000
"	8, "	1,000,000
"	16, "	500,000
May	1, "	200,000
Total, July 1, 1919, to June 30, 1920		5,100,000

Note.—Above amount applied as follows:

To cash advances	\$2,588,178.45
Interest on notes	1,680,000.00
Interest on loans	831,821.55
	5,100,000

CHILE COPPER COMPANY

STATEMENT SHOWING MONTHLY DEBIT BALANCES IN CALL LOAN ACCOUNT
FOR YEAR ENDING JUNE 30, 1920

July 31, 1919	\$250,000
August 31, 1919	200,000
September 30, 1919	1,000,000
October 31, 1919	1,100,000
November 30, 1919	5,100,000
December 31, 1919	5,100,000
January 31, 1920	6,100,000
February 28, 1920	6,100,000
March 31, 1920	6,100,000
April 30, 1920	9,100,000
May 31, 1920	9,100,000
June 30, 1920	9,100,000

CHILE COPPER COMPANY

(From records of Guaranty Trust Company of New York and Central Union Trust Company)

Year	Month	Loans placed		Loans called	
		Number	Amount	Number	Amount
1919	July	5	\$600,000	8	\$1,050,000
	August			1	50,000
	September	11	1,950,000	5	1,000,000
	October	16	2,150,000	16	2,200,000
	November	23	4,700,000	2	700,000
	December	18	2,900,000	15	3,100,000
1920	January	8	950,000	5	950,000
	February	9	1,600,000	8	1,300,000
	March	22	3,150,000	12	2,150,000
	April	42	6,150,000	20	3,350,000
	May	33	5,650,000	41	5,950,000
	June	37	7,400,000	47	7,300,000
		224	37,200,000	180	29,100,000

77 "Exhibit N"—to second amended complaint

CHILE COPPER COMPANY

STATEMENT OF INTEREST ON CALL LOANS

Fiscal year, July 1, 1919—June 30, 1920:

		Amount
July	1919-----	\$3, 537. 12
August	"-----	1, 146. 70
September	"-----	2, 370. 15
October	"-----	2, 976. 77
November	"-----	6, 743. 46
December	"-----	47, 612. 02
January	1920-----	4, 356. 40
February	"-----	37, 326. 57
March	"-----	41, 959. 09
April	"-----	36, 604. 08
May	"-----	60, 401. 21
June	"-----	87, 333. 33
		<hr/> 332, 366. 90

78 "Exhibit O"—to second amended complaint

Treasury Department
U. S. Internal Revenue
Form 707—Revised June, 1919
(To be stamped by collector
showing district and date
received.)

CAPITAL STOCK TAX

RETURNS FOR DOMESTIC CORPORATIONS

(Sec. 1000, Title X, revenue act of 1916)

File with Collector of Internal Revenue for your district

(Do not paste riders to face of return)

1. Name, Chile Copper Company.
2. Address, 120 Broadway, New York.
3. Name of parent company.
4. Name of subsidiary or attach list, Chile Exporation Co.—Chile Steamship Co., subsidiary of Chile Exploration Company.
5. Nature of business in detail, Holding company.
6. Incorporated or organized in State of Delaware. Date of incorporation or organization, April 16, 1913.

7. Return as of close of fiscal year ended, Dec. 31, 1918. Fire insurance carried, as of date, line 7, \$-----

Capital stock outstanding:

79

	Number of shares	Par value per share	Total par value
8. Common -----	3, 800, 000	\$25.00	\$95, 000, 000. 00
9. First preferred -----			
10. Second preferred -----			
11. Total -----			95, 000, 000. 00
12. Amount of surplus deficit -----			3, 210, 380. 97
13. Amount of undivided profits -----			
14. Grand total -----			91, 789, 619. 03

TAX PAYABLE ANNUALLY IN ADVANCE

Return for taxable period July 1, 1919, to June 30, 1920, based on fair average value of capital stock for preceding year

CAREFULLY READ ALL INSTRUCTIONS BEFORE MAKING RETURN

COMPUTATION OF TAX

DOMESTIC CORPORATIONS (EXCEPT DOMESTIC MUTUAL INSURANCE COMPANIES)

(Complete Exhibits A, B, and C, and read all instructions before computing the tax)

15. Fair value of total capital stock for fiscal year determined by Exhibit B -----	\$65, 246, 000
16. Deduction allowed by law -----	5, 000
17. Amount of fair value of capital stock over \$5,000 ---	65, 241, 000
18. Tax at rate of \$1 per year for each full \$1,000 -----	65, 241
80 19. Penalty.	
20. Total tax and penalty.	

DOMESTIC MUTUAL INSURANCE COMPANIES

21. Sum of surplus or contingent reserves maintained for general use of the business.
22. Plus any reserves the net additions to which are included in net income under the provisions of Title II, revenue act of 1918.
23. Total.
24. Deduction allowed by law.
25. Amount in excess of \$5,000.
26. Tax at rate of \$1 for each full \$1,000 in excess of \$5,000.
27. Penalty.
28. Total tax and penalty.

Exhibit A to Exhibit O

(See Special Instructions No. 4, page 4.)

Condensed balance sheet, as of Dec. 31st, 1918

Debits and assets, books of account:

Real estate	-----	
Machinery	-----	
Securities	-----	\$109,668,064.78
Cash	-----	6,282,741.17
Notes receivable	-----	14,000,000.00
Accounts receivable	-----	4,523,239.21
Inventory	-----	
Other assets	-----	
Subtotal	-----	134,474,045.16
Good will, patents, etc	-----	
Deferred charges	-----	8,049.94
Totals	-----	134,482,095.10

Credits and liabilities, books of account:

Bounded debt \$	-----	
Less in Treas	-----	\$42,353,250.00
Mortgages	-----	
Accounts payable	-----	339,226.07
Notes payable	-----	
Other Liabilities	-----	
Reserves	-----	
Depreciation	-----	
Depletion	-----	
Subtotal	-----	42,692,476.07
Deferred credits	-----	
Capital stock	-----	
Preferred \$	-----	
Less in Treas	-----	95,000,000.00
Common \$	-----	
Less in Treas	-----	
Surplus	-----	
Profit and loss	-----	3,210,380.97 Loss (red ink)
Totals	-----	134,482,095.10

RECAPITULATION OF EXHIBIT A

Total debits and assets after deducting debit items not actual assets.....	\$134,474,045.16
Less total of credits and liabilities after deducting capital stock, surplus, and other credits not actual liabilities	42,692,476.07
Difference (value of total capital stock reflected by Exhibit A).....	91,781,569.09

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Exhibit B to Exhibit O

(See Special Instructions No. 5, page 4)

The stock of Chile Copper Company is actively and steadily traded in the New York Stock Market, total sales for the calendar year 1918 being 530,790 shares. The fair value of the company's capital stock is therefore reported at the amount reflected by Exhibit B, computed on the daily average of such stock quotations as reflecting the valuations placed upon the shares of this company in a free and open market in bona fide transactions on a large scale. This valuation, in our opinion, most nearly shows "the fair average value of the capital stock for the preceding year" fixed by the law as the value of this company's capital stock for the purpose of this tax.

QUOTATIONS OR OUTSIDE SALES PRICES

New York Stock Exchange

	Number of common shares outstanding	Price
January.....	3,800,000	\$16.122
February.....		16.528
March.....		15.863
April.....		15.615
May.....		16.228
June.....		15.645
July.....		16.586
August.....		16.354
September.....		16.081
October.....		20.505
November.....		21.361
December.....		19.155
Total.....		206.043
Average.....		17.170

83

RECAPITULATION OF EXHIBIT B

This column for
use of taxpayer

Average sale value of common stock per share, \$17.17, multiplied by 3,800,000 average number of shares---	\$65,246,000
Average sale value of first preferred stock per share, \$-----, multiplied by-----average num- ber of shares-----	
Average sale value of second preferred stock per share, \$-----, multiplied by-----average num- ber of shares-----	
Total (value of total capital stock reflected by Ex- hibit B) -----	65,246,000

EXHIBIT C TO EXHIBIT O

(See Special Instructions No. 6, page 4)

Annual income

The additions of \$2,318,743.08 under Exhibit "C" for year 1918, consists of interest received from Chile Exploration Company amounting to \$993,743.08, and dividend from Chile Exploration Company amounting to \$1,325,000.

Fiscal year ended—	Net income (deficit in red)	Additions	Adjusted income
1914-----	\$658,761.49 deficit	-----	\$658,761.49 deficit
1915-----	1,004,792.40 "	-----	1,004,792.40 "
1916-----	1,121,347.00 "	-----	1,121,347.00 "
1917-----	59,315.61 "	-----	59,315.61 "
1918-----	2,343,232.67 "	\$2,318,743.08	24,489.59 "

84 STATE OF NEW YORK,
County of New York, ss:

We, Harry F. Guggenheim, vice president, and A. Hirschthal, Asst. treasurer, of the above-named company, whose return for special excise tax is herein set forth, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report and in any additional list or lists attached to or accompanying this return are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct.

(Signed) HARRY F. GUGGENHEIM,
Vice president.

(Signed) A. HIRSCHTHAL,
Asst. Treasurer.

Sworn to and subscribed before me, this 31st day of July, 1919,

(Signed) N. E. THIEL,
Notary Public, etc.

85 To the Secretary of the Treasury, the Commissioner of Internal Revenue and the Collector of Internal Revenue for the Second District of New York.

Sirs: The undersigned, Chile Copper Company, having under protest and duress executed and caused to be verified the annexed "Capital Stock Tax Return" upon Form No. 707 as directed by the United States Treasury Department, protests against being required to make said return and against the assessing of any tax based thereon or otherwise against Chile Copper Company under the provisions of Title X of revenue act of 1918, being the act of Congress approved February 24, 1919, said title being commonly called the capital stock tax act, on the ground that at all times, both before July 1, 1918, between July 1, 1918, and June 30, 1919, and after June 30, 1919, Chile Copper Company was engaged solely in representing the interests of a large number of persons in the business of Chile Exploration Company, all of whose stock is owned by Chile Copper Company; that Chile Copper Company exists only for the convenience of such persons in exercising their control as stockholders over Chile Exploration Company and receiving the profits arising from the business of said Chile Exploration Company; that its activities are and have been limited to keeping up its corporate organization, voting the stock of said Chile Exploration Company, holding said stock and the other securities of Chile Exploration Company, receiving dividends upon such stock and distributing the moneys thus received among its own stockholders; that Chile Copper Company is not and has not been "carrying on or doing business" within the meaning of said title of said act of Congress, and is not required by said title of said act of Congress to pay any tax imposed thereby or to render any statement or return or to comply with any regulations of the Secretary of the Treasury or of the Commissioner of Internal Revenue prescribed under the authority of said act of Congress.

Respectfully submitted.

CHILE COPPER COMPANY,
By (Signed) A. HIRSCHTHAL,
Asst. Treasurer.

Address: 120 Broadway, New York City.

(Filed May 14, 1923)

87

In United States District Court

Notice of motion to dismiss

(Filed June 19, 1923)

[Title omitted.]

Please take notice that the undersigned will move this court at a stated term for the hearing of motions to be held at the United States courts and post office building, in the Borough of Manhattan, city, county, State, and southern district of New York, on

the 22nd day of June, 1923, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard for an order granting to the defendant herein judgment dismissing the second amended complaint, upon the ground that said second amended complaint does not state facts sufficient to constitute a cause of action and for such other and further relief as may be just in the premises.

Dated, New York, June 9, 1923.

Yours, etc.,

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Defendant.

Office and P. O. Address, U. S. Courts and P. O. Bldg., Borough of Manhattan, City of New York.

88

To—

ROOT, CLARK, BUCKNER & HOWLAND, Esqs.,
Attorneys for Plaintiff,
31 Nassau Street, Borough of Manhattan,
City of New York.

In United States District Court

[Title omitted.]

Opinion
Opinion (Nov. 14, 1923)

LEARNED HAND, D. J.: It is quite true that this plaintiff has been doing all that it was organized to do, and that this feature constantly runs through the cases, as if it were in some sense a test of whether it was "doing business" at all. Yet I cannot think that this would be a sound rule, or that it makes any difference whether the chartered powers are fully employed or not, because as Mr. Justice Holmes said in *U. S. v. Emery-Bird, Thayer Realty Co.*, 237 U. S. 28, the question is what it does and not what it can do. There would be no justification in treating two corporations differently who did exactly the same things merely because one had an extensive charter and the other did not.

Had this been a lease I think there could be no doubt. The different incidents of the plaintiff's activity have all been passed on. Thus receiving and distributing dividends is not enough to bring the lessor within the statute, *Zonne v. Minneapolis Syndicate*, 220 U. S. 187; *McCoach v. Minehill Ry.*, 228 U. S. 296; *U. S. v. Nipissing Mines Co.*, 206 U. S. Fed. Rep. 431 (C. C. A. 2); *West End Ry. v. Malley*, 246 Fed. Rep. 625 (C. C. A. 1). Nor is the result different if the lessor in addition issues bonds direct to the lessee for his use in paying for improvements upon the leased lands, *Anderson v.*

Morris & Essex R. R., 216 Fed. Rep. 83 (C. C. A. 2); N. Y. Central v. Gill, 219 Fed. Rep. (C. C. A. 1); Traction Cos. v. Collectors, 223 Fed. Rep. 984 (C. C. A. 6); Public Service Co. v. Herold, 229 Fed. Rep. 902 (C. C. A. 3). In one of the cases comprised within Public Service Co. v. Herold, *supra*, it was held that when the lessor, instead of delivering bonds to the lessee to be sold, sold the bonds himself and paid the money to the lessee the result was the same. The following cases present variants upon the general situation in each of which the lessor was held not to be "doing business"; condemning lands for the lessee, N. Y. Central v. Gill, *supra*; selling parts of the leased property, Traction Cos. v. Collectors, *supra*; 90 selling the whole property, Miller v. Snake River Valley R. R., 223 Fed. Rep. 946; providing for the issue of new bonds to refund others cancelled, Public Service Co. v. Herold, *supra*; maintaining a sinking fund and extending an indebtedness, McCoach v. Continental etc. Co., 233 Fed. Rep. 976; acquiring new property for the lessee and improving it to answer to the lease, Jasper etc. Co. v. Walker, 238 Fed. Rep. 533 (C. C. A. 5) (certainly an extreme case); investing the lessor's surplus funds in investments more profitable than bank deposits, McCoach v. Minehill Ry. Co., 228 U. S. 295.

Had the plaintiff leased its property to the Exploration Co., and thereafter done what it did, there can then be no doubt that it would not have been liable to the tax. It seems to me to make no difference that it was organized to do the same things. The term "business" means some profitable activity undertaken on its own account. There was such a business but it was the mining and sale of copper, to which both corporations were necessary, owing to the state of the Chilean law. Of course, it is true that each was doing a part of that business, because financing was a necessary incident to its prosecution. But the excise does not exact a double tax for leave to do a single business, and the plaintiff was in substance no more than the personification of a part of the enterprise. Except for the separation of the corporate activities no one would suggest that the Exploration Co. was doing two businesses. As things are, the nearest approach to a separate business is the plaintiff's investment of its funds in call loans. That, however, falls quite within the rule in McCoach v. Minehill Ry Co., *supra*.

The defendant argues that Van Baumbach v. Sargent Land 91 Co., 242 U. S. 503, changed the earlier rule and made obsolete the decisions in the lower courts which have depended upon it. I can not so understand that decision. The lessor by no means confined itself to activities incidental to the execution of the lease and it was to those added doings that it owed its liability to the tax. It is true that among these was the employment of a supervising engineer (a company), and that this is one of the activities relied upon. While this was a natural incident to the protection of the lessor's interests, yet it was no part of the execution of the

lease, no part of the business conducted by the lessee. However that may be, the lessor did much more than that. It explored the soil on its own account, sold land, made stumpage contracts, and leased lots in a village and to squatters. In short, it appears to have managed the surface for its profit. All this was altogether independent of the business of the lessee.

Chemung Iron Co. v. Lynch, 269 Fed. Rep. 368 (C. C. A. 8), was a similar case though the lessor merely hired a supervising engineer and explored the soil. In *Boston Terminal Co. v. Gill*, 246 Fed. Rep. 604 (C. C. A. 1), the plaintiff conducted a number of profitable ventures in its railway station, quite separate from its formal maintenance of that station, for the benefit of the five roads which built it.

I see no ground in these cases to suppose that the earlier decisions are no longer controlling, and for the reasons already given I think that the motion to dismiss must be denied. That being so, it is my understanding that the plaintiff is to take judgment for the amount demanded with interest, and it is so ordered.

November 14, 1923.

L. H., D. J.

92

In United States District Court

[Title omitted.]

Order denying motion to dismiss

(Filed Nov. 26, 1923)

The defendant above named having moved this court by notice of motion for an order granting to said defendant judgment dismissing the second amended complaint upon the ground that said second amended complaint does not state facts sufficient to constitute a cause of action, and said motion having come on to be heard before Honorable Learned Hand, one of the judges of this court, at his chambers, twelfth floor, Woolworth Building, borough of Manhattan, city of New York, N. Y., and after hearing Thomas

J. Crawford, Esq., of counsel for the defendant, in support of said motion, and after hearing Arthur A. Ballantine, Esq., of counsel for the plaintiff, in opposition thereto, and the court after due deliberation having rendered its opinion that the said second amended complaint states facts sufficient to constitute a cause of action,

Now, upon reading said notice of motion and said second amended complaint, and upon said opinion of this court, all of which have been heretofore filed with this court, and upon motion of Root, Clark, Buckner & Howland, attorneys for the plaintiff, it is

Ordered, that said motion to dismiss said second amended complaint be, and the same is hereby denied, and it is further

Ordered, that the plaintiff may enter judgment against the defendant for the sum of two hundred thirteen thousand one hundred eighty-eight dollars and sixty-four cents (\$213,188.64), with interest as follows:

On twenty-one thousand two hundred thirty-one dollars and fifty cents (\$21,231.50) from the 17th day of April, 1917; on forty-four thousand six hundred seventy-six dollars and fifty cents (\$44,676.50), from the 31st day of October, 1917; on seventy-nine thousand four hundred thirty dollars (\$79,430), from the 27th day of April, 1920; and on sixty-seven thousand eight hundred fifty dollars and sixty-four cents (\$67,850.64) from the 27th day of April, 1920, together with the costs and disbursements of this action.

LEARNED HAND, D. J.

94

In United States District Court

[Title omitted.]

Judgment

(Filed Dec. 1, 1923).

The defendant above named having moved this court by a notice of motion for an order granting to said defendant judgment dismissing the second amended complaint upon the ground that said second amended complaint does not state facts sufficient to constitute a cause of action, and said motion having come on to be heard before Hon. Learned Hand, one of the judges of this court, at his chambers, twelfth floor, Woolworth Building, borough of Manhattan, New York, N. Y., and after hearing Thomas J. Crawford, Esq., of counsel for the defendant in support of said motion, and after hearing Arthur A. Ballantine, Esq., of counsel, for the plaintiff in opposition thereto; and the court after due deliberation having on the 14th day of November, 1923, rendered its opinion denying said motion on the ground that said second amended complaint states facts sufficient to constitute a cause of action, and

95 directing that final judgment should be granted in favor of the plaintiff for the amount demanded in the complaint with interest, and the plaintiff having thereupon duly entered its order in the office of the clerk of the United States District Court for the Southern District of New York, on the 26th day of November, 1923, directing that said motion be in all respects denied, and that plaintiff might enter judgment against the defendant for the sum of two hundred thirteen thousand one hundred eighty-eight dollars and sixty-four cents (\$213,188.64), with interest as follows:

On twenty-one thousand, two hundred thirty-one dollars and fifty cents (\$21,231.50) from the 17th day of April, 1917; on forty-four thousand six hundred seventy-six dollars and fifty cents (\$44,676.50), from the 31st day of October, 1917; on seventy-nine thousand, four hundred thirty dollars (\$79,430), from the 27th day of April, 1920;

and on sixty-seven thousand eight hundred fifty dollars and sixty-four cents (\$67,850.64) from the 27th day of April, 1920, together with the costs and disbursements of this action;

And plaintiff having accordingly on the 28th day of November, 1923, served a copy of said order with notice of entry thereof upon the attorney for the defendant;

Now, upon motion of Root, Clark, Buckner & Howland, attorneys for the plaintiff herein, it is

Adjudged that the plaintiff, Chile Copper Company, recover of the defendant William H. Edwards, collector of internal revenue, Second New York District, the sum of two hundred thirteen thousand, one hundred eighty-eight dollars and sixty-four cents

96 (\$213,188.64), the amount claimed in the second amended complaint, together with interest, as follows: On twenty-one thousand, two hundred thirty-one dollars and fifty cents (\$21,231.50) from April 17, 1917, to December 1, 1923, amounting to the sum of eight thousand four hundred thirty-five dollars and ninety-nine cents (\$8,435.99); on forty-four thousand six hundred seventy-six dollars and fifty cents (\$44,676.50) from October 31, 1917, to December 1, 1923, amounting to the sum of sixteen thousand three hundred six dollars and ninety-three cents (\$16,306.93); on seventy-nine thousand four hundred thirty dollars (\$79,430) from April 27, 1920, to December 1, 1923, amounting to seventeen thousand one hundred thirty dollars and forty cents (\$17,130.40); and on sixty-seven thousand eight hundred fifty dollars and sixty-four cents (\$67,850.64) from April 27, 1920, to December 1, 1923, amounting to the sum of fourteen thousand six hundred thirty-three dollars and twelve cents (\$14,633.12), said interest amounting in the whole to the sum of fifty-six thousand five hundred six dollars and forty-four cents (\$56,506.44); and plaintiff's costs having been taxed at the sum of fifteen and 65/100 dollars (\$15.65); amount in the whole to the sum of two hundred sixty-nine thousand seven hundred and ten dollars and seventy-three cents (\$269,710.73), and that the plaintiff have execution therefor against the defendant.

ALEX. GILCHRIST, Jr.,
Clerk of U. S. District Court
for the Southern District of New York.

97 In United States District Court

[Title omitted.]

Certificate of probable cause

(Filed Dec. 3, 1923)

The defendant above named having moved this court by notice of motion for an order granting to said defendant judgment dismissing the second amended complaint upon the ground that said

amended complaint does not state facts sufficient to constitute a cause of action, and said motion having come on to be heard before this court, and the court having filed its opinion and decision whereby said motion was denied and judgment was directed against the defendant personally, and it appearing that the money which said defendant had received from the plaintiff herein was paid by him in the Treasury of the United States in the performance of his official duty,

Now, therefore, pursuant to section 989 of the Revised Statutes of the United States, I hereby certify that there was probable cause for the act done by the defendant collector.

Dated, New York, December 1, 1923.

LEARNED HAND, U. S. D. J.

98

In United States District Court

[Title omitted.]

Petition for writ of error

(Filed May 22, 1924)

To the Honorable Judges of the United States District Court for the Southern District of New York:

Now comes William H. Edwards, the defendant herein, by his attorney, William Hayward, United States attorney for the Southern District of New York and feeling himself aggrieved by the judgment entered herein on December 1, 1923, in favor of the plaintiff and against this defendant, by which said judgment it was adjudged that the plaintiff have and recover from the defendant the sum of \$269,710.73 and that plaintiff have execution therefor against this defendant, in which judgment and the proceedings had in this cause prior to the entry thereof certain errors were committed to the prejudice of this defendant, all of which more fully appears in the assignment of errors filed herewith.

Wherefore, defendant prays that a writ of error may be
99 allowed to him from the United States Circuit Court of Appeals for the Second Circuit to the District Court of the United States for the Southern District of New York for the correction of errors so complained of and that transcript of the record proceedings and papers in this cause duly authenticated may be sent to the said Circuit Court of Appeals.

Dated, New York, May 22, 1924.

WILLIAM HAYWARD,
*United States Attorney for the Southern District of
New York, Attorney for Defendant.*

Office and post-office address: U. S. Courts and P. O. Building,
Borough of Manhattan, City of New York.

In United States District Court

[Title omitted.]

Assignment of errors

Filed May 22, 1924

Now comes the above-named defendant by his attorney, William Hayward, United States attorney for the Southern District of New York, and files the following assignment of errors and says that the judgment entered in this cause dated December 1, 1923, is erroneous and unjust for the following reasons:

I. The court erred in denying defendant's motion to dismiss the second amended complaint herein on the ground that the said second amended complaint did not state facts sufficient to constitute a cause or causes of action.

II. The court erred in holding and deciding that the second amended complaint herein did state facts sufficient to constitute a cause or causes of action.

III. The court erred in denying defendant's motion to dismiss the alleged first cause of action set forth in the said second amended complaint on the ground that the said alleged first cause of action did not state facts sufficient to constitute a cause of action.

IV. The court erred in holding and deciding that the said alleged first cause of action did state facts sufficient to constitute a cause of action.

V. The court erred in denying defendant's motion to dismiss the alleged second cause of action set forth in the said second amended complaint on the ground that the said alleged second cause of action did not state facts sufficient to constitute a cause of action.

VI. The court erred in holding and deciding that the said alleged second cause of action did state facts sufficient to constitute a cause of action.

VII. The court erred in denying defendant's motion to dismiss the alleged third cause of action set forth in the said second amended complaint herein on the ground that the said alleged third cause of action did not state facts sufficient to constitute a cause of action.

VIII. The court erred in holding and deciding that the said alleged third cause of action did state facts sufficient to constitute a cause of action.

IX. The court erred in denying defendant's motion to dismiss the alleged fourth cause of action set forth in the said second amended complaint on the ground that the said alleged fourth cause of action did not state facts sufficient to constitute a cause of action.

X. The court erred in holding and deciding that the said alleged fourth cause of action did state facts sufficient to constitute a cause of action.

Wherefore, defendant prays that the judgment of the District Court of the United States for the Southern District of New York, be reversed and that the said District Court be directed to enter judgment dismissing the second amended complaint herein on the merits.

WILLIAM HAYWARD,
United States Attorney.

103 [Citation in usual form filed May 24, 1924, omitted in printing.]

104 In United States District Court

[Title omitted.]

Stipulation extending time

It is stipulated and agreed by and between the attorneys for the respective parties herein that the time for the appellant to file transcript of record on appeal be and the same is hereby extended to and including August 29, 1924.

Dated, New York, August 14, 1924.

ROOT, CLARK, BUCKNER & HOWLAND,
Attorneys for Appellee.

WM. HAYWARD,
U. S. Attorney, Attorney for Appellant.

So ordered August 22, 1924.

ALEX. GILCHRIST, Jr.,
Clerk.

105 In United States District Court

[Title omitted.]

Stipulation re transcript of record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, August 28, 1924.

ROOT, CLARK, BUCKNER & HOWLAND,
Attorneys for Plaintiff.

WM. HAYWARD,
U. S. Attorney, Attorney for Defendant.

106 [Clerk's certificate to foregoing paper omitted in printing.]

107 In United States Circuit Court of Appeals for the Second
Circuit

WILLIAM H. EDWARDS, COLLECTOR OF INTERNAL REVENUE, SECOND
New York District, plaintiff in error (defendant below)

against

CHILE COPPER COMPANY, defendant in error (plaintiff below)

Opinion

Per curiam: Judgment affirmed on the opinion of Judge Learned
Hand in the court below.

108 In United States Circuit Court of Appeals

[Title omitted.]

Judgment

(Filed Feb. 24, 1925)

Error to the District Court of the United States for the Southern
District of New York.

This cause came on to be heard on the transcript of record from
the District Court of the United States, for the Southern District
of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged,
and decreed that the judgment of said District Court be and it
hereby is affirmed.

It is further ordered that a Mandate issued to the said District
Court in accordance with this decree.

H. W. R.

M. T. M.

109 [File endorsement omitted.]

110 [Clerk's certificate to foregoing papers omitted in printing.]

111 In Supreme Court of the United States

Order allowing certiorari

(Filed May 25, 1925)

The petition herein for a writ of certiorari to the United States
Circuit Court of Appeals for the Second Circuit is granted. And
it is further ordered that the duly certified copy of the transcript of
the proceedings below which accompanied the petition shall be
treated as though filed in response to such writ.